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COMMITTEE MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD
SPECIAL WASTE COMMITTEE

JOE SERNA, JR., CALEPA BUILDING
1001 I STREET
2ND FLOOR
SIERRA HEARING ROOM
SACRAMENTO, CALIFORNIA

WEDNESDAY, MARCH 8, 2006

10:00 A.M.

TIFFANY C. KRAFT, CSR, RPR
CERTIFIED SHORTHAND REPORTER
LICENSE NUMBER 12277

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

COMMITTEE MEMBERS

Ms. Margo Reid Brown, Chair

Ms. Rosalie Mul

Mr. Gary Petersen

BOARD MEMBER ALSO PRESENT

Mr. Jeffrey Danzinger

Ms. Cheryl Peace

Ms. Patricia Wiggins

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Deputy Director

Mr. Elliot Block, Staff Counsel

Ms. Wendy Breckon, Senior Staff Counsel

Mr. Keith Cambridge, Supervisor, Hauler & Manifest Section

Ms. Bonnie Cornwall, Supervisor, Grants & Certification
Section I

Mr. Mitch Delmage, Manager, Waste Tire Management

Ms. Cynthia Dunn, Staff

Mr. Bob Fujii, Supervisor, Remediation & Engineering
Technical Services Section

Mr. Nate Gauff, Staff

Ms. Jennine Harris, Executive Assistant

Mr. Albert Johnson, Staff

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APPEARANCES CONTINUED

STAFF

Mr. Jim Lee, Deputy Director

Mr. Steve Levine, Staff Counsel

Ms. Claire Miller, Staff

ALSO PRESENT

Mr. Al Cornwell, CSW Stuber Stroen

Mr. Gale Filter, CDAA

Mr. Andrew Floccini, landowner

Mr. Gary Giacomini, Infineon

Mr. Ricahrd Idell, Universal Portfolio

Mr. Terry Leveille, TL & Associates

Mr. Don Silacci, Sildon Farms

Ms. Leandra Swent, SSCRC

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: We'll call this meeting to
3 order. Can you call the roll, please, Jennine?

4 SECRETARY HARRIS: Mulé?

5 COMMITTEE MEMBER MULÉ: Here.

6 SECRETARY HARRIS: Petersen?

7 Brown?

8 SECRETARY HARRIS: Here.

9 Thank you.

10 Any ex partes to report?

11 COMMITTEE MEMBER MULÉ: I'm up to date, Madam
12 Chair. Thank you.

13 CHAIRPERSON BROWN: Thank you.

14 I'd like to remind anybody in the audience to
15 please turn off your cell phones or turn them to the
16 vibrate mode. If anybody does intend to speak today, I
17 would ask you to please turn your cell phone or PDA or
18 Blackberry off. It does cause static in the microphones
19 when you are up at the microphones.

20 Also there are speaker slips at the back of the
21 room. If anybody would like to speak to any of the items
22 on the agenda, please fill out the form and take it to
23 Jennine.

24 I'd like to also acknowledge Board Member Cheryl
25 Peace who will be joining us for the Committee hearing

1 today. Thank you very much, Cheryl. Appreciate that.

2 We'll go to the Deputy Director's Report. Jim.

3 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

4 Good morning, Board members. My name is Jim Lee, Deputy
5 Direct of the Special Waste Division.

6 Madam Chair, I have a couple of quick notes as
7 part of my report this morning. First of all, just to let
8 the audience know that this afternoon at 1:00 we're going
9 to have the kick-off meeting for our Tire-Derived Product
10 Business Assistance Program. This is a program recently
11 approved by the Board for providing various business
12 support services to the tire-derived product industry. We
13 have high hopes and expectations for this particular
14 program. We're going to be meeting, and like I say,
15 literally with our kick-off meeting this afternoon to
16 initiate that process.

17 And then while we're on the meeting notes,
18 tomorrow we're having the monthly edition of our Waste
19 Tire Interested Parties meeting.

20 Madam Chair, I understand you'll be delivering
21 introductory remarks for us.

22 Again, this is a particular forum that has been
23 well received by the regulated communities, the
24 stakeholders for basically keeping them abreast and
25 advised of, you know, where the Board and staff are

1 attempting to take the Waste Tire Program. So, again,
2 that's going to be an all-day meeting starting tomorrow at
3 9:30.

4 Madam Chair, that concludes my Deputy Director's
5 Report. I'm prepared to move into today's agenda with
6 your permission.

7 CHAIRPERSON BROWN: Thank you, Jim. And I do
8 look forward to tomorrow's meeting. I appreciate that.

9 I'd like to acknowledge Board Member Jeff
10 Danzinger who's joined us for the Special Waste Committee
11 meeting today. Thank you, Jeff.

12 Just a note about the agenda. We have pulled
13 Agenda Item 8 from the agenda. We will not be taking that
14 for consideration today.

15 Also another note regarding Board Item 11. Just
16 for informational purposes, this is a discussion item that
17 we would like to have a full discussion at the Committee
18 level, and we will be also taking up at the full Board
19 level as well. But we wanted to have a robust discussion
20 of the item today, and then we will have a full discussion
21 at the Board meeting next Tuesday as well.

22 So if we could move to Agenda Item B.

23 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

24 Committee Item B, Board Item 7, is Consideration
25 of Scope of Work and Contractor for the 2007 Used Oil

1 Recycling Household Hazardous Waste Conference, Used Oil
2 Recycling Fund, Fiscal Year 2005-06.

3 This item is to implement Board direction and
4 confirm the funding allocation for this conference as
5 approved by the Board in January of this year. I'll ask
6 staff to review for the Board the benefits and
7 opportunities this conference provides and discuss with
8 you the contractor that staff proposes to select to assist
9 with the planning and coordination of this event.

10 I'll now ask Cynthia Dunn to make the remainder
11 of the staff presentation.

12 (Thereupon an overhead presentation was
13 presented as follows.)

14 MS. DUNN: Good morning, Board members. My name
15 is Cynthia Dunn, and I'm here to present the Scope of Work
16 and recommended contractor for the 2007 Used Oil Recycling
17 Household Hazard Waste Annual Conference.

18 --o0o--

19 MS. DUNN: The budget and overall Scope of the
20 Work for this conference was approved by the Board during
21 our January presentation. During the same presentation,
22 we reviewed our Board-approved implementation plan which
23 provides the context for this contract.

24 The Board approved seven major strategies to
25 enhance the efficiency, performance, and cost

1 effectiveness of the Used Oil Program as a result of the
2 2004 comprehensive assessment of the Used Oil Program.
3 One of these strategies is to actively promote program
4 improvements through the transfer of best practices to
5 grantees. This conference is one of our major efforts in
6 this area.

7 The conference provides valuable training and
8 networking opportunities to conference attendees.
9 Attendees are able to learn from each other's programs and
10 share what has and has not worked for their jurisdictions.
11 The sharing of this information also allows Board staff to
12 better administer technical assistance to their grantees,
13 improving effectiveness and efficiency of program
14 administration to increase accountability, another
15 strategy of our implementation plan.

16 --o0o--

17 MS. DUNN: Department of Toxic Substances Control
18 co-sponsors the conference, enabling the agencies to
19 realize cost and administrative efficiencies associated
20 with developing and holding one joint conference as
21 opposed to two. The conference draws approximately 250 to
22 300 attendees, which include local government, used oil,
23 and household hazardous waste program managers, nonprofit
24 agency reps, used oil recycling industry leaders, and
25 staff from other Cal/EPA agencies, and up to 30

1 exhibitors.

2 Typically, the first two days of the conference
3 are in-depth training, including the eight-hour hazardous
4 waste operations refresher training course and other
5 courses, such as Basic Chemistry and Block Grants 101
6 which is targeted to new grantees joining the program.

7 --o0o--

8 MS. DUNN: Not only does the conference feature
9 opportunities for training, we also took the time to honor
10 those grantees who have made exceptional contributions to
11 the field. Our last evening of the conference always
12 culminates with an award ceremony. These are photos of
13 the Board members assisting with the 2005 ceremony.

14 I would encourage each of you to join us at this
15 year's conference to be held at the Granlibakken
16 Conference Center in Lake Tahoe. The dates are April 24th
17 through 28th. I believe you got the e-mail this morning
18 about that.

19 The local jurisdictions really appreciated Board
20 participation last year, and the conference provides you
21 with a tremendous opportunity to talk with the grantees
22 and become better acquainted with their programs.

23 --o0o--

24 MS. DUNN: While the Special Waste staff and our
25 Planning Committee play a primary role in developing and

1 planning the program, we rely on the contractor for
2 logistical support. Their Scope of Work includes tasks
3 related to the facility arrangements, both before and
4 during the conference, registration materials, lodging and
5 logistics, coordinating speakers and vendor participation,
6 developing a conference guide and related materials,
7 coordinating the conference evaluation, and also
8 developing the conference proceedings and final report.

9 --o0o--

10 MS. DUNN: Staff recommends entering into an
11 agreement with California State University Sacramento.
12 CSUS staff possesses valuable knowledge in the needs and
13 intricacies of our programs and stakeholders, having
14 provided conference planning services for the Used Oil
15 Recycling Household Hazardous Waste Conference for the
16 past several years, and demonstrating excellent customer
17 service throughout.

18 Prior to submitting this recommendation, staff
19 requested several unofficial quotes from other conference
20 planning firms. And based on this research, we believe
21 CSUS is competitive in both costs and services.

22 --o0o--

23 MS. DUNN: This concludes my presentation of this
24 item. Staff would recommend that the Board approves the
25 proposed Scope of Work and contractor and adopt Resolution

1 2006-44.

2 Thank you. And I'm happy to address any
3 questions at this time.

4 CHAIRPERSON BROWN: Thank you, Cynthia, very
5 much. This was a great presentation. And I will
6 definitely be there.

7 Any questions?

8 COMMITTEE MEMBER MULÉ: No.

9 BOARD MEMBER PEACE: I have a couple questions.
10 You know, this is sponsored jointly with DTSC. How much
11 money do they put in?

12 SUPERVISOR CORNWALL: They don't put in any cash.
13 They help play an active role in the Planning Committee,
14 some of the sessions, et cetera.

15 BOARD MEMBER PEACE: Where in Southern California
16 is it going to be in 2007?

17 SUPERVISOR CORNWALL: We're looking at a number
18 of sites. And we actually may be cosponsoring something
19 with a national NAHMMA conference. So NAHMMA, the
20 National Association of Household Hazardous Waste
21 Materials, something to that effect. But we were in
22 San Diego last year, so one of the possibilities is
23 possibly Long Beach or somewhere. We need a Tier 2 city
24 so it's not too expensive. That's one of the things that
25 was preliminarily kicked around.

1 BOARD MEMBER PEACE: I was going to ask. I know
2 San Diego gets kind of expensive.

3 So when you had it last year in San Diego, how
4 much money did you spend on that conference?

5 SUPERVISOR CORNWALL: If we look at the actual
6 expenses were a little over 138,000. And some of that is
7 offset by revenue from registration and vendors.

8 DEPUTY DIRECTOR LEE: What was the net expense,
9 Bonnie?

10 SUPERVISOR CORNWALL: The net was --

11 DEPUTY DIRECTOR LEE: It was 80 to 90,000, as I
12 recall.

13 SUPERVISOR CORNWALL: Yeah.

14 COMMITTEE MEMBER MULÉ: Madam Chair, I don't have
15 any questions. I'm really pleased to hear that you will
16 be attending this conference. I had the opportunity to
17 attend the conference -- not the entire conference, but
18 part of it last year, and I have to tell you it is one of
19 the best conferences that I think this Board and the staff
20 put on. Especially, number one, the sessions, the
21 speakers, the fact that we do a joint conference with
22 DTSC, and we have that cross-media program is very, very
23 valuable. I know I learned a lot. And I truly appreciate
24 all the hard work that staff does. And if you weren't
25 going to go, I was going to strongly encourage you both to

1 go, because it is a worthwhile conference.

2 And with that, I'd like to approve Resolution
3 2006-44.

4 CHAIRPERSON BROWN: I believe I'm the second.
5 Can you call the roll, Jennine?

6 SECRETARY HARRIS: Mulé?

7 COMMITTEE MEMBER MULÉ: Aye.

8 SECRETARY HARRIS: Brown?

9 CHAIRPERSON BROWN: Aye.
10 We'll move that to fiscal consent.

11 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

12 CHAIRPERSON BROWN: Item C.

13 DEPUTY DIRECTOR LEE: Item C has been pulled,
14 Madam Chair.

15 Item D is Consideration of Adoption of
16 Comprehensive Trip Log Regulations for the Waste Tire
17 Hauler Manifesting Requirements for retreaders, used and
18 waste tire Haulers, generators and end-use facilities.

19 The Board's waste tire permitting and enforcement
20 efforts are multi-faceted. The subject of this particular
21 agenda item is about the regulations for the Board's
22 Manifest Program. The Manifest Program is the facet that
23 integrates and supports the activities of all the others
24 in the waste tire facility permitting, the waste tire
25 hauler registration, and the Board's waste tire

1 surveillance and enforcement efforts. It provides for
2 compilation of information and oversight of movement of
3 waste tires between waste tire generators, haulers, and
4 end-use facilities. And thereby helps to minimize the
5 potential for improper or illegal waste tire disposal.

6 The Manifest Program has gone through several
7 iterations over the years. At the Special Waste Committee
8 in January, staff provided an update on the progress of
9 the regulated community's acceptance and use of a revised
10 Manifest form, the so-called CTL form, and the associated
11 electronic data transfer, that's the EDT, process.

12 We presented information which showed that CTL
13 and EDT were reducing paperwork by more than 80 percent
14 with a corresponding decrease in staff time and other
15 administrative and processing costs.

16 I will now ask Keith Cambridge to reprise
17 portions of that presentation as an introduction to
18 staff's request to the Committee today to finalize the
19 formal rulemaking process to make permanent the changes to
20 the Tire Manifesting Program.

21 (Thereupon an overhead presentation was
22 presented as follows.)

23 SUPERVISOR CAMBRIDGE: Good morning, Madam Chair
24 and members of the Committee. My name is Keith Cambridge
25 of the Waste Tire Hauler Manifest Program.

1 Before Claire Miller goes into the actual
2 regulation part or aspect of the program, I'd like to
3 cover a little history for the new members of the Board.

4 --o0o--

5 SUPERVISOR CAMBRIDGE: In 1993, SB 744 required
6 the Board to develop the current Waste Tire Hauler
7 Registration Program and the original Manifest Program.
8 Regulations establishing these programs became effective
9 in May of 1996.

10 The original Manifest System required each
11 generator, hauler, and end-use facility to complete a
12 portion of the manifest form for the tire transactions and
13 to maintain a copy of that manifest on site for three
14 years. However, copies were not required to be submitted
15 to the Board. Staff estimated because of this, the
16 compliance rate with the required manifest form at that
17 time was in the neighborhood of 3 to 4 percent.

18 In 1998, AB 117 required the Board to prepare and
19 submit a report to the Legislature on the Waste Tire
20 Program and to make recommendations for the needed change.
21 The Board adopted the California Waste Tire Program
22 evaluation recommendations in June 1999, which became
23 recommended modifications for that system. Therefore, in
24 2000, SB 876 was enacted, when the Legislature formed the
25 basis of the current California Uniform, Waste Used Tire

1 Manifest System.

2 --o0o--

3 SUPERVISOR CAMBRIDGE: If one takes a look at the
4 Hauler Registration Program and Manifest System, they're
5 shown to be key components to the overall Waste Tire
6 Enforcement Program playing an important role by providing
7 useful information such as the tire flow, the point of
8 origin, destination, and identifying responsible parties.

9 --o0o--

10 SUPERVISOR CAMBRIDGE: When asked how does the
11 Manifest System assist inspectors; well, it helps the
12 inspectors determine if generators are using the
13 registered waste tire haulers. It helps the inspectors
14 determine the number of tires being picked up and dropped
15 off by haulers and if the hauler is taking these tires to
16 an authorized facility. It also allows the inspector to
17 follow up on reports of unregistered haulers being
18 submitted by end-use facility operators.

19 --o0o--

20 SUPERVISOR CAMBRIDGE: After the manifest
21 information has been analyzed, Program staff can then do
22 the following.

23 We can determine what generators are not
24 participating in the Manifest Program and require a field
25 audit by either our Board staff or enforcement grantees

1 and determine why they're not complying.

2 Staff can also determine what haulers are
3 continuing to do tire hauling business without the
4 appropriate registration.

5 Staff can study the flow of tires versus the
6 outflow of tires at specific locations, determine if there
7 may be storage issues at that site, and then inform the
8 field inspectors of the information.

9 And we can also assist the inspectors on targeted
10 businesses that are already in enforcement mode to kind of
11 get a basically reporting tire flow or history of that
12 site.

13 --o0o--

14 SUPERVISOR CAMBRIDGE: Shown here is the original
15 manifest form that was developed in 1996. On this form,
16 as I mentioned earlier, the generator, hauler, end-use
17 facility would complete this form in their respective
18 portions. One page of the form was left with the
19 generator. One page was left with the end-use facility.
20 One page was left with the hauler. And then if the
21 generator so required, the fourth copy would be sent back
22 to the generator showing delivery of the tires. However,
23 the Board was not a participant in this program and did
24 not receive any copies of this document.

25 --o0o--

1 SUPERVISOR CAMBRIDGE: In July 2003, the Board
2 implemented the California Use and Waste Tire Manifest
3 System, which was comprised of the manifest form and the
4 tire trip log. For every tire transaction that was made,
5 there was a pick up -- and showed pick up or delivery and
6 now the manifest would be completed and entered onto the
7 tire trip log. At a minimum, three of these forms would
8 be completed on the simple pickup. We'd have two manifest
9 forms and one tire trip log form. This was also available
10 to 16,000 generators, haulers, and end-use facilities when
11 we sent these forms out.

12 --o0o--

13 SUPERVISOR CAMBRIDGE: As an example, here's a
14 simple pickup and delivery. It shows the manifest form
15 being filled out by the hauler, part one. Generator fill
16 out part two. The hauler would then take that information
17 from the manifest form, put it on his trip log entry, and
18 then on the delivery manifest form, the hauler would fill
19 out part one. End-use facility would fill out part two.
20 And the hauler would take that form and place it on the
21 trip log entry as well. Each one of those respective
22 parties would then submit a copy to the Waste Board so we
23 can get a copy from the generator, hauler, and end-use
24 facility.

25 --o0o--

1 SUPERVISOR CAMBRIDGE: However, since the
2 implementation of the manifest and trip log in 2003, staff
3 have been approached by several organizations and groups
4 such as the Tire Retread Information Bureau, the Northern
5 and Southern California Chapters of the Tire Dealers
6 Association, several haulers, generators, and end-use
7 facilities all concerned with the amount of time and
8 complexity to complete the form.

9 So in the latter part of 2004 and early part of
10 2005, Board held workshops at the regulated communities to
11 determine what sort of changes could be made to make a
12 cost effective tracking system that would still be
13 implemented that would not sacrifice any of the
14 information.

15 Staff developed the comprehensive trip log. The
16 new CTL form contained much of the information that was
17 required on the manifest and trip log forms, but
18 eliminated the redundancies. The responsibility was also
19 placed upon the hauler to complete the form and ensure its
20 delivery to the Board.

21 It is our belief that by limiting the number of
22 individuals completing the form, it would allow for less
23 errors as well. CTL form can accommodate up to three
24 different tire transactions on one form. Since the
25 implementation of the form, several of the previously

1 mentioned groups have forward and showed an expressed
2 interest they are happy with the new form and it has cut
3 down the work that is required. And yet it still provides
4 us the necessary tracking mechanisms.

5 --o0o--

6 SUPERVISOR CAMBRIDGE: With the CTL form now in
7 use, the hauler can use these receipts for pickup,
8 deliveries, or both, combination of all. When the hauler
9 completes the form, the operator will issue the invoice
10 verifying the information to be true and correct. The
11 hauler will then leave a copy or receipt with the
12 generator or end-use facility. And then, finally, he will
13 submit his completed copy to the Board and retain a copy
14 for himself.

15 If the hauler fails to leave a receipt, we do
16 have provisions for that, form 204, which is a reporting
17 form to the Board saying we did not receive a receipt or
18 the 204 form can be used for unregistered waste tire
19 haulers coming into the end-use facility.

20 --o0o--

21 SUPERVISOR CAMBRIDGE: In comparing the old forms
22 to the new forms, basically we have three manifest forms
23 compared to one manifest -- or four forms: Manifest and
24 trip log to one CTL form.

25 In all the old system, three parts were required

1 to complete and submit the information. Now only the
2 hauler is required to complete the information. But still
3 obtain the signatures of all three individuals showing
4 that the information is correct.

5 The CTL form still requires the generator and the
6 end-use facility to cooperate in fullest. And the
7 manifest and trip log forms were too time consuming and
8 confusing, and we have eliminated that problem.

9 --o0o--

10 SUPERVISOR CAMBRIDGE: If we take a simple look
11 at the first six months of usage with the manifest trip
12 log form in 2003 and then the first six months of usage
13 with the new CTL form, we've cut the paperwork
14 tremendously, by 82 percent. We're close to over 700,000
15 the first six months of those forms and then down to
16 127,000.

17 Along with the cut in paperwork, we're also
18 showing less forms to be mailed out and having to have
19 staff time mailing, and also pre-paid postage. So coming
20 back, we're not paying that additional postage cost as
21 well. So there's quite a bit of cost savings for this new
22 form.

23 --o0o--

24 SUPERVISOR CAMBRIDGE: And as I mentioned earlier
25 in January, our goal still, though, is to do 100 percent

1 if we can get to that point of zero waste, where we switch
2 to electronic data transfer, which is EDT. Basically,
3 this is a process where the hauler can submit his
4 information via electronic device versus them sending in
5 by paper.

6 We have two modes of EDT. We have the batch
7 mode, which is the information is taken on a monthly basis
8 and sent to the Waste Board. It's for the larger waste
9 tire hauler where they have an accounting software firm or
10 software program that can adapt to our requirements. And
11 then they take the information and submit it to the Board
12 on a monthly basis. All the information that's submitted
13 is quality controlled prior to entering into the system
14 itself.

15 --o0o--

16 SUPERVISOR CAMBRIDGE: The second form, which is
17 a more popular form the smaller or moderate haulers, is
18 the website EDT process where they can enter their log
19 information into the website and then enter the
20 information for that particular transaction and then hit
21 the submit button. So they can do this on a weekly or
22 daily basis as well.

23 Again, the only thing we require of all these
24 haulers is to come up with a form that's been approved by
25 the Board which contains the information that's on the

1 manifest form. Once they have that and they've gotten our
2 approval, they can start with the EDT process. And we
3 understand from most of the -- actually all of the haulers
4 that are in this process, it's very, very well balanced as
5 far as getting the information to us and not having the
6 effort behind it.

7 --o0o--

8 SUPERVISOR CAMBRIDGE: At this point, I'll turn
9 over the process of the final rulemaking process to Claire
10 Miller of my staff. She'll go over the history of the
11 emergency regulations and rulemaking process for this
12 final.

13 MS. MILLER: Good morning.

14 --o0o--

15 MS. MILLER: Now that we've covered the history
16 of the Manifest System and shown how the comprehensive
17 trip log has further reduced the unnecessary paperwork and
18 time, now we will still be striving to place more haulers
19 on the EDT system.

20 I'd like to present the final waste tire hauler
21 registration and manifesting regulations for adoption,
22 replacing the emergency regulations which are currently in
23 effect.

24 At the April 2005 Board meeting, the Board
25 adopted the proposed emergency regulations and directed

1 staff to submit regulations to the Office of
2 Administrative Law for review, approval, and filing with
3 the Secretary of State. The emergency regulations became
4 effective on June 9th, 2005. A subsequent time extension
5 has been granted by the OAL to a final date in June 2006
6 or until the proposed regulations are approved by the OAL.
7 These emergency regulations incorporate the newly
8 developed CTL form and changes to the existing EDT system.

9 A public comment period was held from December
10 30th, 2005, to February 16th, 2006. We received comments
11 that are listed in the agenda item for the Board meeting.
12 In general, none of the comments resulted substantive
13 changes.

14 --o0o--

15 MS. MILLER: In general, the revisions to the
16 existing waste tire hauler registration and manifesting
17 regulations streamlines the manifesting system by adding
18 the CTL form and establishing criteria for the EDT
19 process. Reducing the amount of time and paperwork
20 required and making the system more effective as well as
21 correcting errors, adding language to make the regulations
22 more functional, and deleting unnecessary language.

23 In conclusion, staff is recommending that the
24 Board adopts Option 1 and approve the revised CTL
25 regulations for adoption with no change; find the

1 regulations exempt from California Environmental Quality
2 Act, CEQA, process requirements; direct staff to complete
3 the rulemaking process with OAL; and therefore adopt
4 Resolution Number 2006-46.

5 This concludes our presentation. Are there any
6 questions we can answer?

7 CHAIRPERSON BROWN: Thank you, Keith and Claire.
8 That was a great presentation. And congratulations to
9 staff on just a wonderful process of reducing paper and
10 the process and making it easier for haulers and
11 generators to get the paperwork to us. It's just a
12 phenomenal effort that you've put forward. So
13 congratulations on that.

14 Any questions? Board Member Peace.

15 BOARD MEMBER PEACE: Again, I'd like to thank
16 staff also. They've done a great job with this, Keith,
17 Wendy from Legal, Doug, Claire, Rubia. You've all done a
18 great job.

19 I had one question. On page 3, it says that an
20 unregistered hauler is supposed to be use a form 204. The
21 generator or end-user are supposed to using this form to
22 let us know if they've done business with an unregistered
23 hauler.

24 SUPERVISOR CAMBRIDGE: The form 204 is actually
25 for the end-use facility. So when they receive tires from

1 an unregistered hauler, if that unregistered hauler is
2 hauling ten or more tires, then they can report the
3 information on the form and at the end of the month send
4 the form in with a bunch of different names and so forth
5 on all the haulers that came into the facility and how
6 many tires it has, driver's license information, name of
7 the person. And then also whether it was manifest use or
8 not. So we can get more tracking information with that
9 form.

10 It can also be -- it's a universal form. I can
11 be in some situations which we really don't expect too
12 much of, but some generators, they deal with the
13 registered waste tire hauler, and the hauler forgets to
14 leave a receipt. What we first ask them to do is catch
15 the hauler and see if they can give you a receipt back for
16 the transaction. If the hauler does not have a form or
17 something, then that person can contact us. We give them
18 that form. They fill it out and send it back so we can
19 follow up with sort of enforcement actions against the
20 hauler for why he's not using the manifest form at this
21 time.

22 BOARD MEMBER PEACE: Do we feel we're getting a
23 pretty good compliance rate on that?

24 SUPERVISOR CAMBRIDGE: We first started. We sent
25 out the first flier back I believe in September last year

1 on the 204 forms, and we're getting probably 16 different
2 landfills sending the forms back. But we weren't
3 satisfied with that. We sent out in January another
4 update. And we got quite a few more landfills now
5 participating at least letting you know whether they are
6 receiving tires or not. And if they are from unregistered
7 haulers, they send out the form to us. And we're able to
8 track that database in our WTMS system and follow that
9 license plate. If a hauler comes in a second time, we
10 follow up with a certified letter. And the third time, we
11 take enforcement action against that hauler.

12 BOARD MEMBER PEACE: Is there any kind of
13 enforcement action we can take against a generator or
14 end-use facility for taking things from -- taking tires or
15 letting a hauler pick them up or an end-use facility
16 taking tires from unregistered --

17 SUPERVISOR CAMBRIDGE: If generators allow an
18 unregistered hauler to take tires, we can take enforcement
19 action against them at that time, because they're supposed
20 to be contacting with a registered waste hauler. If it's
21 the end-use facility accepting tires, we encourage them to
22 take the tires so the tires aren't rejected and they go
23 back into the canyon or dumped. But it's their obligation
24 to report that transaction to us so we can follow up with
25 a letter or investigation on that hauler and why he's

1 hauling tires.

2 Many situations, they're just cleaning up the
3 backyard. It's a one-time haul. But there's some
4 situations where it might be a tire dealer that they try
5 to circumvent the system and bring their own tires in,
6 cutting costs, we follow up on that.

7 BOARD MEMBER PEACE: Thank you. Again, great,
8 great job.

9 CHAIRPERSON BROWN: Thank you.

10 I'd like to acknowledge Board Member Wiggins has
11 joined us. Thank you very much, Pat.

12 Do we have any other questions from Board
13 members? I do have one speaker, Mr. Terry Leveille.

14 MR. LEVEILLE: Thank you, Committee Chair Brown
15 and Committee Member Mulé. And welcome other Board
16 members. Appreciate you coming here for this exciting
17 discussion about the Manifest System. At the end of the
18 Committee meeting, I do have a test so you can compare in
19 an essay the old system versus the new system and fully
20 understanding that you have a full understanding of batch
21 mode EDT versus the web-based EDT. Very complicated
22 actually. Luckily, you've got some really good staff, and
23 we've been working with them.

24 I've been representing the Retreaders and the
25 Tire Retread Information Bureau, the California Tire

1 Dealers Association North and South. And throughout your
2 staff has worked very well with us, and we've been very
3 close in terms of adopting the new process. It has really
4 helped reduce paperwork for everyone. Not only
5 stakeholders, but also your staff. And in the old days,
6 even the Board members sometimes looked through the
7 manifests that were just flowing in here without any let
8 up.

9 But I just want to once again -- you know,
10 strongly support, you know, making the permanent
11 regulations. I think this is a workable effort and
12 workable solution for both the generators who I represent
13 and some of the end users that I represent. It's
14 certainly a lot easier, a lot less paperwork. And we're
15 trying to work with everybody to get them to adopt the
16 web-based batch mode -- or the web-based EDT and the batch
17 mode for some of the end users.

18 And we just want to, you know, congratulate staff
19 for putting in long hours and getting this thing adopted.
20 It was a bad system. Theoretically, it would have been a
21 good system, but it doesn't work that way in reality. And
22 this is more based on the reality of a failed experiment.
23 And we think it's very proper. Thank you very much.

24 CHAIRPERSON BROWN: Great. Thank you, Terry,
25 very much for your comment and feedback.

1 And again, staff, just a phenomenal effort on
2 your part, and we appreciate it. And hopefully we'll get
3 to the EDT system quickly.

4 COMMITTEE MEMBER MULÉ: With that, Madam Chair,
5 before I make a motion, I would again thank staff for all
6 their hard work. Thank you to all the stakeholders for
7 your involvement in making a bad system a good system.

8 And also I want to recognize Board Member Peace
9 for all of your work with the Tire Manifest System. Board
10 Member Peace put in a lot of her own time and effort into
11 making this system a good system. So it truly was a team
12 effort.

13 With that, I'd like to move Resolution 2006-47.

14 CHAIRPERSON BROWN: Second.

15 COMMITTEE MEMBER MULÉ: 46.

16 SECRETARY HARRIS: Mulé?

17 COMMITTEE MEMBER MULÉ: Aye.

18 SECRETARY HARRIS: Brown?

19 CHAIRPERSON BROWN: Aye.

20 Thank you. We'll move that to consent agenda for
21 the Board.

22 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

23 Committee Item E, Consideration of Awards for the
24 Targeted Rubberized Asphalt Concrete Incentive Grant
25 Program. As you know, increasing the use of RAC, or

1 rubberized asphalt concrete, is one of the linchpins in
2 the Board's effort to significantly increase the diversion
3 and recycling of waste tires. To this end, the proposed
4 program is a complement to the Kuehl Bill Grant Program
5 and is designed to provide additional incentive to
6 encourage use of the product by local jurisdictions that
7 have no experience with it. The item before you today is
8 to implement Board direction as received during the
9 five-year tiring planning review and approval process.

10 I'd also like to take a moment to point out that
11 pursuit to the process approved by the Board at the
12 February Board meeting, a continuous grant application and
13 approval process for this grant program has been
14 implemented. As is the case with this agenda item, we
15 will be coming to the Board on a monthly basis with
16 applications which have been deemed complete by staff.
17 The completeness evaluation will include staff discussions
18 and consultations with applicants to ensure they have
19 proper knowledge and training on appropriate RAC usage so
20 a successful project can be ensured.

21 I'll now ask Nate Gauff to make the remainder of
22 the staff presentation and identify the projects we
23 propose for funding this month.

24 MR. GAUFF: Good morning, Committee members.
25 Nate Gauff from the Special Waste Division.

1 As Jim has said, this was changed from a
2 quarterly awards schedule to a monthly awards schedule.
3 And as such, you know, I'm working up to the last minute,
4 which is why you just got the completed agenda items
5 today. Hopefully, we can alleviate some of that in the
6 future. But given what I went through this time, I doubt
7 it.

8 We did receive twelve applications from the
9 jurisdictions statewide. One was deemed ineligible due to
10 the fact that the jurisdiction has an ongoing program and
11 ongoing use of rubberized asphalt, and they did apply for
12 the SB 1346 Program. So they should be in the running to
13 receive some grant moneys, but not under this program
14 because they were ineligible.

15 Of the eleven eligible applications, or
16 applicants, they represent a cross-section. We actually
17 got a couple rural jurisdictions in, which would be
18 classified as rural under this program for this cycle.
19 Most of them are from Northern California, which is
20 interesting. But I think that really speaks to the fact
21 that the majority of Southern California is -- there's
22 ongoing use of rubberized asphalt in Southern California,
23 especially in L.A., Orange County, San Diego County area.
24 So we would expect that the first-time users a lot of them
25 would come from Northern California.

1 Of the eleven applications or eleven applicants,
2 the total requested funding was 1,793,986, and I'd like to
3 read into the record each applicant since it was not in
4 the agenda item.

5 So the eligible applicants are City of Lompoc,
6 funding recommendations 200,000; County of Santa Cruz,
7 funding recommendation 200,000; City of Fremont, funding
8 recommendation, 175,000; City of Rancho Cordova, funding
9 recommendation is 175,000; City of Sacramento, 175,000;
10 City of Calipatria, 159,986; City of Baldwin Park,
11 150,000; City of Delano, 150,000; City of San Fernando,
12 150,000; City of Pittsburg, 146,000; and City of Brea,
13 113,000. Once again for a total of \$1,793,986.

14 One other item I'd like to just correct in the
15 agenda item on page 2, this is a very minor item. In the
16 number 2 funding recommendations, it says refer to
17 Attachment 1 which that should actually be Attachment 2
18 which is referring to the Resolution. So I just wanted to
19 correct that in the agenda item.

20 With that, the Board -- I mean, the staff
21 recommends adoption of Resolution 2006-47.

22 Are there any questions?

23 CHAIRPERSON BROWN: Thank you very much, Nate.

24 This is huge utilization of the program
25 considering what we've gotten to date. I want to thank

1 you very much.

2 Do we have questions?

3 Board Member Peace.

4 BOARD MEMBER PEACE: Well, I have a few
5 questions. So these are all first-time users or limited
6 users?

7 MR. GAUFF: Correct. I've talked with the
8 jurisdictions. I believe --

9 BOARD MEMBER PEACE: I thought Sacramento was
10 already a pretty big user. Is that the County and not the
11 City?

12 MR. GAUFF: No. Actually, in the city they've
13 done two projects, but they were both terminal blend. And
14 as you know, this program is specifically requiring
15 asphalt rubber. So in that sense, they are a first-time
16 user of asphalt rubber. So we include them in the
17 program.

18 BOARD MEMBER PEACE: Okay. And also this -- I'm
19 just wondering since the Ogilvy contract hasn't gotten off
20 the ground yet in terms of trying to bring people into the
21 program, how did these people come to us? Did we go out,
22 or was it just through the NOFAs we got all this response
23 just from that?

24 MR. GAUFF: I would say most of it's been through
25 the NOFA which has been our historic process for grant

1 solicitation. We sent out over 2,000 NOFAs back in
2 November. And I think given the timing of the NOFA being
3 sent out, this was probably about the right timing for the
4 jurisdictions to be able to respond. And I anticipate
5 that we'll be able to fully allocate the money to the
6 jurisdictions.

7 So this is just on the NOFA response. And then,
8 you know, some follow-up through phone calls and maybe
9 some contacts through the MACTEC and things like that.
10 But most of it's been through NOFA.

11 WASTE TIRE DIVISION SUPERVISOR DELMAGE: Mitch
12 Delmage, Manager of the Waste Tire Program.

13 If I might add, one thing we did different this
14 year is we sent out a letter to all the decision makers.
15 And there was quite a bit of a response, and it was in
16 anticipation of the Ogilvy contract. We'll also be
17 sending out another letter to the same group of people
18 talking about future programs coming up. So we expect
19 that we'll be getting a similar type of response.

20 CHAIRPERSON BROWN: I don't know whether, Mitch,
21 this goes to you or Nate. But also since the Board just
22 recently approved the continuous allocation of these
23 funds, were the jurisdictions and the people that received
24 that letter made aware that we will be continuously --
25 because this would have fallen into the quarterly awarding

1 of these grants, which may be some indication as to why
2 there's a larger number this month then there were last
3 month. Are they aware they can continuously send their
4 applications and they'll be considered on a monthly basis?

5 MR. GAUFF: They have not, but we'll be sending
6 out a revised NOFA probably by Friday is what we're
7 scheduled to send that out.

8 This, once again, was on the original schedule so
9 to speak. So, you know, I think we're okay. And I think
10 we're going to, like I say, be able to expend all the
11 money or at least allocate it to the jurisdictions by the
12 end of the fiscal year.

13 WASTE TIRE DIVISION SUPERVISOR DELMAGE: If I
14 might add as well, we held up on sending out the second
15 letter because we weren't sure if we would be fully
16 subscribed for the Kuehl Bill Program that's coming up.
17 And as it looks now, we will be. So we'll go ahead and
18 send out the letter for the targeted RAC Program.

19 CHAIRPERSON BROWN: Great. Thank you very much.

20 COMMITTEE MEMBER MULÉ: Madam Chair -- are you
21 finished?

22 BOARD MEMBER PEACE: Uh-huh.

23 COMMITTEE MEMBER MULÉ: Madam Chair, I just want
24 to add, actually we did work in conjunction with our
25 contractor Ogilvy Worldwide on sending the letter out just

1 before the League of Cities Conference. As I recall,
2 League of Cities Conference was held in October. We sent
3 the letter out just prior to in anticipation of meeting up
4 with a number of the elected officials and the city
5 managers and public works directors at the League of
6 Cities which I attended. And, frankly, we were very
7 successful in talking to them. We had Ogilvy and Nate was
8 there, thank goodness, to work with us in surveying a
9 number of the jurisdictions to find out again to follow
10 and find out had they used RAC. If they have, how did
11 they find it, if they hadn't.

12 So we did work -- again this was all part of our
13 outreach campaign, and it was all timed accordingly so we
14 had the letter go out. We did our follow-up at the League
15 of Cities. And I think that's why we generated quite a
16 bit of interest via the letter that went out, via the
17 contact that we had at League of Cities and then the
18 follow up with the NOFA. So I just wanted to add to
19 Nate's comments.

20 CHAIRPERSON BROWN: Thank you.

21 Any other questions?

22 Thank you very much, Nate, for the presentation
23 and Mitch for the added information.

24 Do I have a motion?

25 COMMITTEE MEMBER MULÉ: I do have a question

1 before I make a motion here. The Resolution I have, is
2 this a Revised Resolution? We probably should have a
3 Revised Resolution, because we don't have any numbers in
4 the Resolution.

5 DEPUTY DIRECTOR LEE: Ms. Mulé, if we could and
6 with the approval of our legal counsel, perhaps we could
7 just note that the Resolution would be the same with the
8 revisions as Nate has read into the record this morning.

9 CHAIRPERSON BROWN: Is that acceptable to
10 counsel?

11 STAFF COUNSEL BLOCK: Either way would be
12 acceptable.

13 COMMITTEE MEMBER MULÉ: With that, I move
14 Resolution 2006-47.

15 CHAIRPERSON BROWN: Second.

16 SECRETARY HARRIS: Mulé?

17 COMMITTEE MEMBER MULÉ: Aye.

18 SECRETARY HARRIS: Brown?

19 CHAIRPERSON BROWN: Aye.

20 We'll put that on fiscal consent.

21 Next item.

22 DEPUTY DIRECTOR LEE: Committee Item F,
23 Consideration of the Award for the Waste Tire Enforcement
24 Grant to the California District Attorney's Association
25 Circuit Prosecutor Project. A significant portion of the

1 Board's waste tire enforcement effort is carried out by a
2 network of 39 jurisdictions that provide for inspections
3 and surveillance and other related work. They also
4 prepare referrals for follow-up action by the Board's
5 Legal Office as appropriate.

6 Through a contractual relationship with the
7 California District Attorney's Association Circuit
8 Prosecutor Project, additional assistance to local
9 jurisdictions in the rural areas can be provided, and the
10 Board's limited resources can be leverage.

11 I'll now ask Wendy Breckon of the Board's Legal
12 Office to make the remainder of the presentation.

13 SENIOR STAFF COUNSEL BRECKON: Hello. I'm Wendy
14 Breckon, Senior Staff Counsel with the Board. And we have
15 a Power Point presentation that's coming up.

16 (Thereupon an overhead presentation was
17 presented as follows.)

18 SENIOR STAFF COUNSEL BRECKON: I just want to say
19 a few things before Gale Filter, who's the Executive
20 Director of CDAA, tells us more about the Circuit
21 Prosecutor Project.

22 The Board's Legal Office prosecutes the
23 administrative, enforcement, and penalty actions which
24 consist of most of our cases. Administrative cases are
25 heard before the Office of Administrative Hearings, which

1 is a lot like a superior court, except for most of the
2 rules of evidence are followed, not all.
3 Administratively, we can obtain penalties for waste tire
4 storage and waste tire hauler violations. In addition, we
5 could obtain waste tire facility permit revocations and
6 waste tire hauler revocations. However, certain cases
7 present such egregious circumstances that you want to
8 refer them to a district attorney for prosecution such as
9 a case involving tires and hazardous waste, multi-media
10 cases. Our best tool would be maybe to go to the DA to
11 try to get some jail time.

12 Unfortunately, some rural jurisdictions do not
13 have the resources to prosecute environmental cases. So
14 what CDAA has done is they provide circuit prosecutors and
15 investigators who are environmentally trained, and they
16 pursue civil actions in superior court.

17 --o0o--

18 SENIOR STAFF COUNSEL BRECKON: CDAA is an
19 enforcement tool that supplements our administrative cases
20 for the most egregious cases. Besides hazardous waste
21 cases, as I mentioned, we may also want to refer cases to
22 CDAA if it involves misrepresentations or fraud or
23 multi-jurisdictional cases or other attempts to circumvent
24 our regulations.

25 --o0o--

1 SENIOR STAFF COUNSEL BRECKON: Just a little
2 background on our waste tire law so you can see what a
3 powerful tool they are. For waste tire facility storage
4 violations, we can get administrative penalties for
5 \$10,000 for violations for intentional violations; up to
6 5,000 for negligent violations. For civil cases, which go
7 to Superior Court and which we can have the AG prosecute
8 or a DA prosecute, they're up to \$10,000 violations for
9 intentional and again 5,000 for negligence. For criminal
10 violations, we can have again up to \$10,000 per violation
11 and one year county jail time.

12 These really add up. Because if you think about
13 it for waste tire storage violations, you have a huge
14 number of tires, let's say, and they're sitting there for
15 a long time because our inspectors have tried
16 unsuccessfully to get the property owner or the operator
17 to clean up the tires. So there's a number of months
18 perhaps where each day is considered a violation, and
19 you're getting up to \$10,000 per violation.

20 For hauler cases, we also have penalties,
21 criminal penalties for haulers that direct waste tires to
22 an unpermitted facility. They get up to one-year jail
23 time and \$10,000 penalty. And the civil and
24 administrative penalties for other hauler violations we
25 can get up to \$25,000 per violation if we go civil or

1 10,000 if we go to an administrative hearing.

2 --o0o--

3 SENIOR STAFF COUNSEL BRECKON: So in fiscal year
4 2001-2002, the Board established a two-year pilot project
5 with CDAA to assist the rural jurisdictions. This pilot
6 project proved successful and we incorporated CDAA into
7 the Five-Year Plan. For example, as soon as the project
8 started, we referred a hauler case. This case involved an
9 unregistered hauler who had been dumping waste tires in
10 national forests area, other federal lands, and private
11 lands. And it was difficult for our inspectors to
12 basically catch them. So CDAA was working with State,
13 local regulators. They investigated the case and the
14 prosecutor obtained a conviction.

15 They've also worked on other cases including the
16 Westly tire fire case which Gale will be talking about a
17 little bit.

18 Training. CDAA's also present at our monthly
19 waste tire enforcement meetings where we kind of get all
20 the inspectors on the same page so to speak. They attend
21 the Cal/EPA State Strike Force meetings. They go with us
22 to waste tire roundtables where we basically do outreach,
23 you know, usually in three or four sessions every quarter
24 or so. If I'm wrong, then Program can tell me. But I
25 think that's the timeline. And we basically do outreach.

1 And the CDAA circuit prosecutor will attend that with us
2 to do presentation or prosecution. I worked with Jane
3 Crew, who was a circuit prosecutor on a Cal/EPA symposium
4 conference last year. We did a joint presentation on
5 waste tires. I'm sure there's other training that I'm
6 missing.

7 But if awarded, the grant -- the Board will
8 continue to work with CDAA to refer civil and criminal
9 cases to local DAs. And CDAA will provide circuit
10 prosecutor investigator services to pursue civil and
11 criminal actions.

12 Now I'd like introduce Gale Filter who's the
13 Executive Director I believe of CDAA. And he's been
14 working as an environmental prosecutor for 15 years. He
15 was with Imperial County as a DA there or Deputy DA there
16 for a number of years. And he's been working for the last
17 seven years for CDAA. So here's Gale.

18 CHAIRPERSON BROWN: Good morning. Welcome,
19 Mr. Filter.

20 MR. FILTER: If I may, I'll give you a copy of
21 the Circuit Prosecutor Annual Report for 2005.

22 (Thereupon an overhead presentation was
23 presented as follows.)

24 MR. FILTER: I'm not going to go through this
25 report, but let me just say that it will give you an

1 overview of several things, one of which is exactly what
2 the environmental problems are in the state of California.
3 And you can see, Canaries in the Coal Mine. I did this
4 presentation last year for the United Nations at World
5 Environmental Day.

6 And I can tell you straight up, given my
7 experience, having been in the position I have for the
8 last seven years is that California is in serious
9 environmental trouble. A third of the water in the state
10 is polluted. We have 14 of the 25 worst counties in the
11 United States for air pollution. And as I get into this,
12 you can see that although waste tires aren't quite the
13 problem that the air quality and the water quality is in
14 the state, they nevertheless represent a problem that we
15 deal with in the rural counties almost on a daily basis.
16 As Jared Diamond points out in his book Collapse, the two
17 things that are probably most important for us in the
18 environmental regulatory community is first to understand
19 that there are environmental problems; and secondly,
20 there's got to be something done to work on those
21 problems.

22 This report that I gave you basically tells you
23 how the Circuit Prosecutor Project fits into the
24 Governor's Environmental Action Plan. Enforcement is
25 absolutely essential for compliance. And I'll show you

1 why in a few moments.

2 It also is kind of interesting because what the
3 report does is we've never done this before. But in
4 November or December of last year, we went to the 33 rural
5 counties in the state of California and we interviewed
6 every single DA with the exception of one to see what the
7 project was doing for those district attorneys. And let
8 me tell you that since the project was founded in 1998 and
9 next year -- I'm sorry -- next month will be the eighth
10 birthday of the project, we have prosecuted over 1,600
11 cases amounting to over \$30 million in fines and penalties
12 and up to 16 years in prison. So we've had a significant
13 impact.

14 And most importantly, as you will see when we get
15 to the Westly tire fire, is that this program is a huge
16 savings to the people of California. Just to give you
17 some idea of the Westly tire fire, the cost in that case
18 in cleanup amounted to \$17 million. And through the
19 Circuit Prosecutor Project's efforts, the Waste Management
20 Board's efforts, Air Resources Board, and other agencies
21 in the EPA as well as the Attorney General's Office, we
22 managed to collect \$11 million. If we hadn't collected
23 this \$11 million in cleanup costs, it would have been
24 passed on to you, the taxpayers in the state of
25 California. So I don't have a clicker here.

1 --o0o--

2 MR. FILTER: The problem as George Carlin puts it
3 is that 1997 in the state of California, agencies such as
4 the Waste Management Board kept on putting the dollar in
5 the change machine and nothing was changing. And the
6 reason is we simply couldn't enforce the programs in the
7 state. And the reason is because there were no
8 prosecutors in rural California to speak of.

9 It was absolutely amazing the number of cases
10 that were being referred to the district attorney's
11 offices, and the district attorneys would simply throw up
12 their hands and say, "We do not have the resources to
13 prosecute those kind of cases. We have bigger things on
14 our radar," i.e., murders, rapes, robberies, burglaries,
15 DUIs, whatever the case may be. But on the environmental
16 end of it, it was a low priority simply because the
17 resources weren't available.

18 So in 1998, through EPA, Department of Fish and
19 Game, that's Cal/EPA, U.S. EPA, and the District
20 Attorney's Association the Circuit Prosecutor Project was
21 developed. And the idea was that prosecutors would be
22 hired by the District Attorney's Association and
23 administered by the District Attorney's Association. And
24 when cases developed in rural counties, the circuit
25 prosecutor would bring that case to the district attorney.

1 They would be sworn in to prosecute that case, and
2 therefore provide a prosecutorial resource they did not
3 have.

4 --o0o--

5 MR. FILTER: I didn't quite understand this when
6 I first became a prosecutor, but I will tell you,
7 environmental crime is real crime. There's absolutely no
8 doubt about that. I have done murder cases. I have done
9 a death penalty case. I have done some of the worst
10 crimes you can possibly think of. And none -- I assure
11 you none can match some of the crimes that I have seen
12 done on the environmental front. And more importantly,
13 some of those crimes will never be recovered. We will
14 never come back to what the damage was done in some of the
15 cases that I have seen.

16 --o0o--

17 MR. FILTER: Wendy went through most of this. It
18 pretty much lays out for you what the project is about.
19 That is providing experienced environmental prosecutors to
20 the rural counties.

21 In 2003, the American Bar Association awarded the
22 District Attorneys' Association, the Circuit Prosecutor
23 Project with their award for outstanding environmental
24 achievement. We were the only organization in the
25 United States to receive the award that year. And the

1 basis of that award is we were bringing fair, uniform, and
2 consistent enforcement to not only the rural counties but
3 also throughout the state of California.

4 And since I've been on board in '99, I can tell
5 you I've seen tremendous improvement in terms of
6 communication, cooperation, coordination between local,
7 state, and federal agencies. And also the training that
8 we have been involved in not only with the Waste
9 Management Board, but with the other agencies under the
10 Cal/EPA umbrella.

11 --o0o--

12 MR. FILTER: Those blue counties you see up
13 there, it's kind of interesting. We have 33 of those
14 counties. And to give you some idea as to what the size
15 is of the counties that we cover, that is approximately
16 the size of the state of Nebraska. That is a lot of area.
17 There is a lot of environmental violations going on in
18 those areas. And to be honest with you, given the circuit
19 prosecutors that work in the project, you think about it.
20 We are covering a lot of territory, doing a lot of work.
21 In one instance you'll see what kind of impact that the
22 project has had.

23 --o0o--

24 MR. FILTER: Mike Ramsey, who is the district
25 attorney for Butte County, as he points out that his

1 office wouldn't be doing some of the cases that have been
2 referred to him but for the Circuit Prosecutor Project.

3 --o0o--

4 MR. FILTER: He doesn't look like that, by the
5 way.

6 The cases that you see up there, that's what we
7 see. If you start thinking about those cases, Wendy
8 mentioned and I heard some other people mention this
9 morning, that they're multi-media cases. And I'll get to
10 exactly what that means. But a waste tire case can become
11 something way beyond simply the dumping of a few tires,
12 and you'll see why that is.

13 We do underground storage tanks. We see a lot of
14 that violation in the rural counties; waste tires, air
15 pollution, hazardous waste, oil spills, illegal dumping,
16 water pollution, pesticide violations. That is our life
17 in the rural counties. And we're not talking about minor
18 violations that we become involved in. We become involved
19 in criminal cases. Half the cases that we do which amount
20 to over 200 cases a year are civil. The other half are
21 criminal.

22 --o0o--

23 MR. FILTER: I'm sure you're aware of this is the
24 Public Resources Code, but this sort of sets the tone for
25 what happened in Westly. Let me just sort of tell you how

1 I became involved in Westly. 1999, I was moved up here
2 from Imperial County where I was a prosecutor for nine
3 years. And I was staying in terms of transition at Jim
4 Morgester's house who was Chief of Compliance at the Air
5 Resources Board. And he got a phone call, and he became
6 the incident commander of the Westly tire fire. And he
7 said, "Gale, you have to go out with me to see this,
8 because if it is as they describe it, it's unlike anything
9 we've ever seen in California."

10 So I became involved in this on a number of
11 fronts. I was actually out there standing on top of the
12 hill watching the fire burning. I was watching the smoke
13 go across I-5 into the aqueduct. I attended public
14 meetings regarding that. And I remember school teachers
15 coming in and saying, "We had to put wet towels under the
16 door so we could teach class." I remember having people
17 come in from the communities of Westly and Patterson when
18 Ms. Wiggins was in the Legislature, and that became --
19 this incident became the basis of Senator Perata's Bill SB
20 1865 which became our air quality law we have this day
21 because of the inherent air problems this particular case
22 gave rise to.

23 --o0o--

24 MR. FILTER: This is truly a multi-media case.
25 It was water problems. It was air problems. It was

1 hazardous waste problems. It was all kind of problems
2 besides waste tires. There were approximately seven
3 million tires out there.

4 --o0o--

5 MR. FILTER: This gives you some idea as to what
6 Westly looked like.

7 --o0o--

8 MR. FILTER: This was day one of the fire. It
9 was not only a health problem, but I remember being in
10 Patterson for one of the community meetings and the people
11 there, the farmers there were particularly concerned as to
12 whether or not it was going to impact their ability to
13 sell crops out of that area.

14 --o0o--

15 MR. FILTER: This is a pyrolytic pool of oil, the
16 waste oil that was produced by those tires. Again, you
17 begin to get appreciation as to exactly what the cost of
18 cleanup was involved in this.

19 --o0o--

20 MR. FILTER: Another view -- I was actually
21 standing above this. In fact, I think this picture may
22 have been taken the day I was there. But I had never seen
23 anything quite like this.

24 --o0o--

25 MR. FILTER: Day five, you can see it's still

1 going. The fire went on for 27 days.

2 --o0o--

3 MR. FILTER: If I can move back, if you look
4 across, you can see highway 5 in the back. You can see
5 some cars on it. And then you can see the aqueduct which
6 carries the water supply into Los Angeles, which people in
7 Los Angeles had concerns about.

8 --o0o--

9 MR. FILTER: The damage report, you can go
10 through that. Four million gallons of contaminated water,
11 the PAHs, benzines, all carcinogens. And the costs are
12 laid out for you as to what a monster it was to clean that
13 thing up.

14 --o0o--

15 MR. FILTER: This is probably the greatest quote
16 that I've come across. It was the owner of the Westly
17 tire fire. Shortly after the fire was put out, he made a
18 comment in the paper, which by the way is hanging on my
19 wall in my office, saying, "The law is on my side as much
20 as they want to pretend it's not." He was wrong on that
21 regard. The law was not on his side. But in order to
22 show him that, we had to prosecute it. That's it. If you
23 have any questions --

24 --o0o--

25 MR. FILTER: You know, I think the last slide

1 pretty much wraps up where I'm coming from.

2 I should just say next week we will be going to
3 trial on the Peterson case in Nevada County that has 3,000
4 waste tires. We're charging Mr. Peterson with felony
5 counts of disposal and storage of hazardous wastes. We
6 filed that case in 2003. It's taken us to 2006 to get him
7 into a court of law. But he's there. And it will be
8 judgment day, so to speak, for Mr. Peterson.

9 If you have any questions, I'll be happy to
10 answer them.

11 CHAIRPERSON BROWN: Thank you, Mr. Filter. I
12 appreciate it.

13 Any questions from the Board?

14 Member Wiggins.

15 BOARD MEMBER WIGGINS: In rural counties, are the
16 environmental crimes worse than in urban counties?

17 MR. FILTER: Just a different kind of crime. You
18 know, I like to say if you can't find an environmental
19 crime, go to Los Angeles, because there's plenty there to
20 find.

21 BOARD MEMBER WIGGINS: I know.

22 MR. FILTER: But they take a wide variety as I
23 pointed out. I mean, what we see today, as you read that
24 report, that California is undergoing an incredible
25 transformation. We are increasing in population. But

1 believe it or not, a lot of that growth is taking place in
2 the rural counties. What we are seeing is cases of water
3 pollution. We're seeing cases of stream bed alteration
4 because of developers. The DA's told us that is one of
5 their biggest concerns, is developers coming into the
6 rural areas. And, of course, we're seeing, you know, the
7 problem that exists throughout the world, what do you do
8 with waste tires? And we see them piled along the sides
9 of the roads. We see them putting behind farms, what have
10 you, with no permits to hold those tires.

11 BOARD MEMBER WIGGINS: So is part of the problem
12 kind of out of sight, out of mind, because it's hard to
13 get there?

14 MR. FILTER: Right.

15 BOARD MEMBER WIGGINS: Thank you.

16 CHAIRPERSON BROWN: Is your focus on rural
17 counties also because they have less resources to go after
18 the landowner or violators versus larger counties? Do the
19 larger counties go after the offenders on their own
20 without the assistance?

21 MR. FILTER: Right. The bottom line is the
22 larger counties can afford to have their own environmental
23 units. In all of the rural counties, the district
24 attorneys have approximately 400 prosecutors. For the
25 size of the state of Nebraska, there's only seven circuit

1 prosecutors, which amounts to approximately one and a half
2 percent of all prosecutors in the rural counties are
3 environmental prosecutors.

4 CHAIRPERSON BROWN: So the program is focused
5 mostly on the rural counties to assist them in raising
6 their level of enforcement to where larger counties can do
7 it on their own?

8 MR. FILTER: Absolutely.

9 CHAIRPERSON BROWN: Any questions from Board
10 members?

11 SENIOR STAFF COUNSEL BRECKON: I'd like to
12 request the Committee recommend approval of Option 1 of
13 the Waste Tire Enforcement Grant to CDAA to adopt
14 Resolution 2006-52.

15 COMMITTEE MEMBER MULÉ: Before I move the
16 Resolution adoption, I just was wondering if we could have
17 a report. If you could report back to the Board on the
18 cases that we bring to CDAA, like a status report. I
19 think that would be helpful for us to know how successful
20 we've been, if we're not doing that already. I just don't
21 recall seeing that.

22 SENIOR STAFF COUNSEL BRECKON: Okay. So either
23 in memo format or --

24 COMMITTEE MEMBER MULÉ: Yeah. I mean, just an
25 update. A memo would be fine. It doesn't have to be this

1 lengthy report. But it would just be nice to know
2 specifically what cases you're working on for us.

3 SENIOR STAFF COUNSEL BRECKON: Okay.

4 CHAIRPERSON BROWN: Simple memo format is fine.
5 Not a full agenda discussion item.

6 SENIOR STAFF COUNSEL BRECKON: Okay.

7 COMMITTEE MEMBER MULÉ: Thank you.

8 With that, I'd like to move Resolution 2006-52.

9 CHAIRPERSON BROWN: Second.

10 SECRETARY HARRIS: Mulé?

11 COMMITTEE MEMBER MULÉ: Aye.

12 SECRETARY HARRIS: Brown?

13 CHAIRPERSON BROWN: Aye.

14 Mr. Lee.

15 DEPUTY DIRECTOR LEE: Thank you, Madam Chair.

16 CHAIRPERSON BROWN: We will move that to the
17 fiscal consent agenda, please.

18 DEPUTY DIRECTOR LEE: Committee Item G, Board
19 Item 11, is Report on the Status of and Request for
20 Direction for Remediation of the Sonoma County Waste Tire
21 Site.

22 As the agenda item title connotes, this item is
23 not a consideration item requesting approval of a specific
24 course of action, and thus no resolution accompanies this
25 item. It is staff's intention to craft a consideration

1 item for presentation to the Board in the near future,
2 after reflecting on the input from the responsible land
3 owners and comments and direction from the Board members.

4 At this point, a little historical perspective on
5 why we are here today would be useful. There were eight
6 sites in Sonoma County which a cumulative total contained
7 over one million tires and represented the largest known
8 remaining waste tire piles in the state. The largest tire
9 piles outside of the Sonoma area in Westly and Tracy had
10 been consumed in large conflagrations that have to date
11 cost this Board more than 20 and 18 million dollars to
12 remediate respectively.

13 The Board certainly wanted to avoid the costly
14 potential for this or any other adverse and environmental
15 or public health consequence in Sonoma.

16 The Board also needed to comply with the
17 provisions of state law regarding cleanup of waste tires,
18 but also wanted to acknowledge to the extent reasonable
19 the landowners' contentions that some of the tires were
20 brought to the sites pursuant to other governmental agency
21 approvals in prior decades.

22 In recognition of these and other considerations,
23 but in stark contrast to the Board's customary
24 administrative and local processes for handling waste tire
25 cleanups, the Board entered into negotiated cost recovery

1 agreements with the landowners in July 2003. Under the
2 terms of these agreements, the Board agreed to consider to
3 forgive some a substantive portion of the tire
4 remediation, that is the tire removal costs, in exchange
5 for the landowners' agreements to secure all necessary
6 environmental and land use permits and provide and accept
7 sole financial responsibility for any erosion control on
8 their property after the tires were resolved.

9 The remainder of the staff presentation will be
10 divided into two parts. In the first part, staff will
11 report on the Board-managed remediation on four of the
12 eight sites. Those sites were the Beebe Family Ranch,
13 Briggs, Wilson Beebe, and Silacci sites.

14 The remediation of these sites, containing 80
15 percent of the known waste tires in Sonoma County,
16 proceeded this past summer and was successfully concluded.
17 In recent weeks, however, we received reports that erosion
18 control measures employed by one of the landowners on the
19 Silacci property was not performing as expected.

20 Subsequent investigation by Board staff and the Board's
21 contractor, ERRG, reveal that erosion was attributed to
22 the severity of rain events in Sonoma and surrounding
23 areas which caused flooding and other damage sufficient to
24 warrant a federal disaster classification.

25 I also want to note that in recent days staff has

1 had follow-up conversations with Mr. Silacci which I
2 interpret as resulting in a better understanding of the
3 responsibilities of all parties in this matter. Mr.
4 Silacci I believe is in the audience today and can speak
5 to this issue.

6 Additionally, in light of recent discussions with
7 the Wilson Beebe site representative, I wanted to reaffirm
8 our engineer's evaluation that the restoration efforts
9 there have held up well and acknowledge staff's
10 appreciation of a landowner's efforts in this regard. The
11 site has advised they will be providing the final plans
12 once the grading permit process is completed and will be
13 exchanging cost documentation with the Board so that we
14 can bring this site to a successful conclusion.

15 In the second part of the staff presentation,
16 staff will address the status of the remediation of the
17 remaining four Sonoma waste tire sites. Those are the
18 Universal Portfolio, Floccini, and Infineon Raceway and
19 Ahlgrim sites. The Sonoma County Resource Conservation
20 District has been acting as lead agency for these sites.

21 To date, we cannot confirm that the RCD has made
22 substantive process in obtaining necessary California
23 Environmental Quality Act and permit approvals for these
24 sites. We remain concerned that the outlook for
25 remediation of these sites this calendar year is

1 problematic. We look to hear from the landowners and
2 their representatives today to receive clarification on
3 their plans and time schedules for complying with the
4 Board's directives to remediate these sites as soon as
5 possible.

6 With that overview, I'll now ask Bob Fujii and
7 Albert Johnson to make the next portion of the staff
8 presentation to update the Board on remediation of four of
9 the sites concluded last year.

10 (Thereupon an overhead presentation was
11 presented as follows.)

12 MR. JOHNSON: Good morning, Madam Chair,
13 Committee member, and Board members. My name is Albert
14 Johnson. I was the project manager for the work on the
15 Sonoma tire sites.

16 --o0o--

17 MR. JOHNSON: Last August, at the update to the
18 Board, five of the sites were ready for remediation. Four
19 of those sites were remediated. One, the Universal
20 Portfolio site, was not.

21 --o0o--

22 MR. JOHNSON: As Jim already mentioned, this
23 agenda item is two parts. The second part will deal with
24 the CEQA issues, of which the Southern Sonoma Resource
25 Conservation District is the lead agency.

1 In total, we removed about 12,750 tons of waste
2 tires, debris, and soil from the four sites that we
3 cleaned up last year. That represents about 80 percent of
4 the total tires in Sonoma of all eight of the Sonoma tire
5 sites.

6 --o0o--

7 MR. JOHNSON: The waste removal activities were
8 completed at the Beebe Family Ranch, Briggs, also known as
9 Valley Ford, Silacci, and Wilson Beebe Family Trust site.
10 Essentially all the tires were removed from these sites
11 where we left the bottom layer of tires which was
12 incorporated into the fill that went over the tire removal
13 area.

14 --o0o--

15 MR. JOHNSON: I have a couple slides here to give
16 you the concept of the work and what was done. These
17 slides, there's two different scenarios. These two
18 different scenarios usually at most sites, depending on
19 the area where the work was done, they were both
20 incorporated.

21 Here we see the tires in a drainage area. We
22 removed the tires. And then the restoration work usually
23 involved the placement of some erosion control measures
24 which could be like an erosion mat, vegetation that would
25 be seeded. And in a lot of cases, they put in a little

1 couple of check dams, little rock dams to slow the water
2 down. This is basically what's done in stream bed.

3 --o0o--

4 MR. JOHNSON: The other example of conceptually
5 what we've done is remove the tires. And here we see the
6 left the bottom layer of tires like we did at Mr.
7 Silacci's site. That, in fact, the bottom layer of tires
8 extended over the tire area where we removed the tires.
9 Then we came back in and they placed an engineered fill
10 over the excavation of the area, and some type of erosion
11 control measure is generally placed on that. It could be
12 like I say erosion mat, could be just vegetation, seeded.
13 And so those are the two methods that we used out there
14 essentially.

15 --o0o--

16 MR. JOHNSON: Now I'll go over the four sites
17 with some pictures so you can get an idea of what the
18 sites looked like, since we have these new Board members
19 who haven't been out there.

20 At the Beebe Family Ranch site, this was the
21 largest tire pile. We estimated there was about 600,000
22 tires out there. And they were located in three areas
23 along a drainage. We worked out there for a couple of
24 months. We removed approximately 9,000 tons of material.

25 --o0o--

1 MR. JOHNSON: Here's a picture of the tires in
2 place before we began work.

3 --o0o--

4 MR. JOHNSON: Here's a picture of the excavation
5 where we've pulled out all the tires, including the tires
6 that were silted in because that was required for the
7 landowner to implement their site restoration plan.

8 --o0o--

9 MR. JOHNSON: Here's a picture of the restoration
10 in place. That's basically a stream bed here. Some fill
11 was placed prior to the placement of that rock material to
12 bring the grades up to get the flow on the stream.

13 --o0o--

14 MR. JOHNSON: And here's a picture after the big
15 storms after the end of December showing some of the
16 erosion that occurred in the stream bed.

17 --o0o--

18 MR. JOHNSON: At the Silacci site, the tires were
19 relocated in two areas on the hillside. We spent about a
20 month out there working, maybe a little less. Removed
21 about 660 tons of tires.

22 --o0o--

23 MR. JOHNSON: Here's a picture of the tires of
24 one of the areas.

25 --o0o--

1 MR. JOHNSON: Here's a picture of the site under
2 construction.

3 --o0o--

4 MR. JOHNSON: Here's a picture of the large tire
5 removal area completed, and I believe it's hydroseeded
6 here.

7 --o0o--

8 MR. JOHNSON: And here's a picture of that same
9 area where some erosion occurred due to the large storm
10 events.

11 --o0o--

12 MR. JOHNSON: At the other tire removal area,
13 here's a picture that shows some of the erosion that
14 occurred at near that tire removal area.

15 --o0o--

16 MR. JOHNSON: And we cleaned up the Briggs site.
17 The tires were in two areas here. We spent several months
18 out there. Removed approximately 1180 tons of material.

19 --o0o--

20 MR. JOHNSON: Here's the tire's in a tributary
21 drainage to the main drainage at the Briggs site.

22 --o0o--

23 MR. JOHNSON: Here's a picture of the main
24 drainage being excavated.

25 --o0o--

1 MR. JOHNSON: Here's a picture of the same main
2 drainage area where it was restored. Here they placed
3 erosion matting. And you can see kind of way up here
4 that's the little rock check dams. And this was all
5 seeded. And, in fact, this picture was taken after the
6 large storm event. So this stream bed held up very well
7 with this drainage.

8 --o0o--

9 MR. JOHNSON: Here's a picture of some of the
10 erosion damage. This is a tributary channel that I showed
11 in the first picture where it kind of washed out and
12 they're going to repair that.

13 --o0o--

14 MR. JOHNSON: The last site is the Wilson Beebe
15 Trust site. There the tires were relocated in two main
16 areas. We spent a couple months out there working and
17 removed approximately 1,910 tons of waste tires.

18 --o0o--

19 MR. JOHNSON: Here's the tires in one of the
20 drainages where you see the bottom there where they're
21 being excavated out.

22 --o0o--

23 MR. JOHNSON: Here's another picture of the
24 excavator working on the tire removal areas.

25 --o0o--

1 MR. JOHNSON: Here's a picture of the restoration
2 in place. And also this picture was taken after the
3 storms. There was some damage at this site.

4 --o0o--

5 MR. JOHNSON: Here's the other tire area.
6 Overall, this site held up very, very well. As Jim had
7 mentioned, we're pleased. But here's probably the worst
8 damage from the rains is right in this area where there's
9 a washout over a sub-drain pipe.

10 --o0o--

11 MR. JOHNSON: So that pretty much concludes my
12 presentation of the four sites we cleaned up.

13 Now I'm going to turn the presentation over to
14 Gary Dellavecchia who's with Engineering Remediation
15 Resources Group, or ERRG. And they conducted an
16 engineering evaluation of the sites that we've remediated.
17 And he'll talk about the report that they prepared, which
18 is the attachment to the agenda item.

19 CHAIRPERSON BROWN: Could you state your name
20 again for the record?

21 MR. DELLAVECCHIA: Gary Dellavecchia.

22 CHAIRPERSON BROWN: Thank you.

23 MR. DELLAVECCHIA: Good morning.

24 Engineering and Remediation Resources Group,
25 ERRG, under contract with the State of California,

1 provided services to the State to remove waste tires at
2 the four locations that Albert just identified. Upon
3 completion of those removal efforts, ERRG was also
4 contracted to observe, survey the observations of the
5 actual conditions after the restoration contractor
6 provided by the owner completed their restoration efforts.

7 We did that in two phases as is identified on the
8 slides. What we did is we tried to confirm whether the
9 projects were constructed in accordance with the as-built
10 plans. That entailed not only visual inspections of the
11 surface areas upon completion to verify that the as-builts
12 were representative of the actual conditions, but also
13 cross reference the as-built to the original design plans
14 to see if there were any substantial changes and if the
15 as-built plans notated those changes, and not only
16 identified, but with the landowners or the representatives
17 engineers identified those changes and concurred those
18 changes were acceptable to modify their initial plan.

19 We also provided follow-up inspections after the
20 major storm event to see how the site held up during the
21 post-storm events.

22 --o0o--

23 MR. DELLAVECCHIA: While we did observe all four
24 sites during their condition after the large rain event,
25 initially we were instructed to verify the as-built and

1 original design completion plans after we were presented
2 with the set of plans provided to the State by the owner
3 or the representative.

4 Beebe Family Ranch and Silacci sites both
5 provided those documentations to the State, and then from
6 the State to ERRG. And Mr. Peter Loveridge, a
7 professional engineer working with our firm, went to both
8 of those facilities to verify the placement of the
9 restoration efforts and to verify that it was done in
10 accordance with the plans.

11 With respect to the Beebe Family Ranch, we did
12 confirm that the restoration work had been done in
13 accordance with the original approved plans by the
14 engineer. Let me stop here for a second. The engineer
15 for the Beebe Family Ranch also gave us a Memorandum of
16 Understanding provided to the State and to ERRG as to why
17 the as-builts differed. They identified the differences
18 from the actual placement conditions, cross-referencing
19 the original design. Any changes or deviations between
20 those two documents -- because historically you have a
21 design. You built to the design. Your as-built mimics
22 your design. If there is any deviation from that, there
23 is usually a revised set of plans or at a minimum a
24 Memorandum from the design engineer that those changes
25 and/or deviations have been discussed with the engineer of

1 record and that the changes were made in accordance to
2 acceptable practices and that he accepts and agrees to
3 those changes.

4 So with the Beebe Family Ranch, not only did we
5 have the as-built drawings, the original drawings, we were
6 able to compare the two. And the engineer of record had
7 also provided to the State the Memorandum of Understanding
8 that talked about why the two plans were different, what
9 changes they had made, what their rationale for making
10 those changes and their backup assurances that those
11 changes were acceptable engineered practices.

12 --o0o--

13 MR. DELLAVECCHIA: The same level of detail was
14 put forth at the Silacci site. We did receive and review
15 the Silacci site. After the restoration effort was
16 completed, we did note in our report to the state of
17 California that there were some deviations from the
18 as-built plans from the original design plans. There was
19 no Memorandum of Understanding or update from the plans
20 from the original design engineer as to why those changes
21 were made or whether or not he had full acceptance and
22 approval to make those changes.

23 --o0o--

24 MR. DELLAVECCHIA: The other two sites, both the
25 Briggs and the Wilson Beebe site, even though we were

1 originally instructed to wait until we received the plans
2 to verify the installation, because of the extremely heavy
3 storms that befell California in late December of 2005, we
4 did visit the sites just to see what the erosion impact
5 was to the areas, and the previous slides identified that.
6 All things considered, based on the volume and severity of
7 the storms, held up fairly well.

8 I believe that is the conclusion of my portion.

9 Thank you.

10 DEPUTY DIRECTOR LEE: Madam Chair, we'd like to
11 move into the next part of the presentation with regards
12 to the discussion on the remediation of remaining four
13 sites. With that discussion, again I'm going to be
14 handing out some additional information with regards to a
15 copy of the transcript from the Board meeting last August
16 and also some information which we are classifying as an
17 addendum that speaks to some of the issues regarding the
18 Board's direction on the number of tires that could be
19 left at the site under these remediations. So we'll hand
20 these out to the Board and have copies available in the
21 back for the interested parties.

22 And then I'd like to have Steve Levine, the
23 Board's legal counsel, to take up the next part of the
24 presentation.

25 (Thereupon an overhead presentation was

1 presented as follows.)

2 STAFF COUNSEL LEVINE: Good morning. Moving on
3 now to the status of the four remaining Sonoma County
4 waste tire sites starting with the Universal Portfolio
5 site, this site was one of five sites which had indicated
6 at the August 16th Board meeting that it would shortly be
7 prepared to proceed with remediations in the summer or
8 early fall. Unfortunately, by mid-September, the site had
9 yet to retain a contractor to perform the restoration work
10 after all the other sites were well underway. And, thus,
11 this site could not proceed as scheduled.

12 --o0o--

13 STAFF COUNSEL LEVINE: The lack of progress at
14 this site arose as an issue during the Deputy Director's
15 Report at the September 14th, 2005, Special Waste
16 Committee meeting during which the Committee expressed its
17 disappointment with this development. Never the less, the
18 site representative advised in late September that
19 Universal Portfolio will be prepared to commence
20 remediation early this coming summer.

21 At the time of the writing of this item, we were
22 hopeful they would be -- the site would be presenting a
23 contractor bid and other information to go forth for the
24 summer. The last couple of days and then with
25 confirmation last night, there seemed to be some

1 additional developments on that. So the site
2 representative is here, and he'll be speaking on that
3 issue.

4 --o0o--

5 STAFF COUNSEL LEVINE: The other three of the
6 four sites that are still outstanding are the Infineon,
7 Flocchini, and Ahlgrim sites. In furtherance of the
8 Board's direction at the August 16th, 2005, meeting, in
9 late November, staff requested review of the environmental
10 compliance documents for these sites and to meet with the
11 lead agency to review the status. To date, neither the
12 documents nor a date for the meeting have been
13 forthcoming, notwithstanding repeated requests by staff.

14 --o0o--

15 STAFF COUNSEL LEVINE: This takes us to the
16 request for direction portion of the item. And assuming
17 the aforementioned concerns regarding the lead agency's
18 responsiveness can be resolved, staff seeks direction with
19 respect to the lead agency's request for a timetable
20 change with respect to these sites. Although information
21 in this regard from the lead agency has to date been
22 limited, apparently the request is predicated on two
23 issues.

24 --o0o--

25 STAFF COUNSEL LEVINE: Issue one, the

1 hundred-year storm of late December has prompted the lead
2 agency and the landowners to reconsider the scope and
3 scale of their restoration efforts. As previously
4 mentioned in this item, heavy rains in December 2005
5 resulted in widespread flooding and associated erosion
6 throughout Sonoma County. Based on available data, the
7 storm exceeded the hundred-year flood event for many
8 regions of the county. President Bush declared Sonoma
9 County and eight other California counties disaster areas
10 due to the severe floods that inundated parts of the
11 state, including Petaluma where many of these sites are
12 located.

13 From staff's perspective, it is understandable
14 that the lead agency and the landowners want to reconsider
15 the scope and scale of the restoration efforts, just as
16 those who have suffered through Hurricane Katrina are now
17 reconsidering whether levees designed to withstand a Level
18 3 hurricane are still sufficient given the severity of
19 that storm. Here, it appears appropriate to provide a
20 reasonable amount of time for the lead agency and
21 landowners to conduct a similar analysis with respect to
22 the erosion control and slope stability plans they had
23 previously prepared.

24 --o0o--

25 --o0o--

1 STAFF COUNSEL LEVINE: Again, however, given the
2 opacity of information staff has received in this matter,
3 it is difficult to ascertain at this time precisely what
4 is being proposed in this regard, the timetable for coming
5 to a determination, and the impact a change in plans would
6 have on the status of the environmental impact documents.
7 This meeting provides an opportunity for documentation and
8 additional information to be provided on this issue.

9 --o0o--

10 STAFF COUNSEL LEVINE: Finally, we want to
11 address what is apparently a renewed request by the
12 landowners to simply bury the remaining tires. As set
13 forth in the item, the two scenarios which could
14 potentially lead to leaving the tires in place have long
15 been debated at the Board, and both options have already
16 been deemed unacceptable by the landowners.

17 There's a lot of detail in the item on this. I'm
18 going to briefly go through those. And if there's any
19 discussion on this afterwards, I can flush it out in more
20 detail.

21 The first scenario that had been previously
22 addressed and coming up again now is can the waste tires
23 be buried at the sites in such a manner that their burial
24 would not result in the creation of a solid waste disposal
25 site under the Integrated Waste Management Waste or

1 statutory authority. As explained in the item, the civil
2 engineering application proposal which would facilitate
3 such an option is cost prohibitive and involves shredding
4 the tires and replacing it, et cetera. And from my
5 understanding, there's a consensus that that's not really
6 a viable option for the landowners.

7 --o0o--

8 STAFF COUNSEL LEVINE: The second scenario is if
9 burial is deemed to create a disposal site, can an
10 exception be made to the permitting and enforcement
11 requirements for such a site, given the unique
12 circumstances presented here and that Jim touched on
13 earlier on in the item. As explained in more detail on
14 the item, the Board is constrained from sanctioning an
15 activity which is essentially disposal with burying tires
16 without fashioning some form of permitting and enforcement
17 requirements for the site, which again my understanding
18 that there's a consensus the landowners do not want these
19 sites to be under disposal.

20 --o0o--

21 STAFF COUNSEL LEVINE: So that concludes our
22 portion of the presentation, and I would return it to Jim.

23 DEPUTY DIRECTOR LEE: Yes, Madam Chair. That
24 does conclude staff's presentation. We'd look to receive
25 the comments from the stakeholders and the Board's

1 direction in this matter.

2 CHAIRPERSON BROWN: Thank you, Jim, and staff,
3 Albert and Steve. I appreciate the presentation.

4 We do have six speakers requested. If the Board
5 is all right, we can have the speakers speak, and then we
6 can go to staff and speaker for an entire questioning.

7 BOARD MEMBER WIGGINS: I'd like to make a
8 comment. I just want to remind people that the State
9 government and federal government before the 1992 Tire Act
10 had recommended waste tires to be used for erosion
11 control. I have the documents in my hand. So just
12 historically so that everybody is clear.

13 CHAIRPERSON BROWN: Thank you, Board Member
14 Wiggins.

15 The first speaker is Don Silacci. Mr. Silacci,
16 if you'd approach.

17 MR. GIACOMINI: We sort of have an organized, the
18 people that are on there in order. Is that okay with the
19 Chair?

20 CHAIRPERSON BROWN: Fine.

21 MR. GIACOMINI: My name is Gary Giacomini. I'm a
22 representative of Infineon Raceway. We're one of the
23 sites. I represent Steve Page and Infineon, or
24 historically Sears Point Raceway. We're one of the
25 remaining sites that needs to be attended to.

1 CHAIRPERSON BROWN: Yes, I understand. Please,
2 can you state your name for the record and spell your last
3 name so we have it appropriate.

4 MR. GIACOMINI: My name is Gary Giacomini,
5 G-i-a-c-o-m-i-n-i. I'm an attorney for Infineon,
6 historically known as Sears Point Raceway.

7 I especially want to thank you very much for this
8 opportunity to meet with you, especially since you have so
9 many new Board members. And I want to put a face on us,
10 and we all do, so you don't think we're all a bunch of
11 scofflaws just running around trying to violate laws, et
12 cetera. We want to remedy this as much as you want us to.

13 I want to state on behalf of Infineon, my clients
14 made the worst mistake they ever made in their life by
15 buying some nine or ten years ago an 800-acre site to put
16 parking on. This 800-acre site -- and would you mind if I
17 just distribute one thing for your review? This 800-acre
18 site which we purchased through Parkon has turned out to
19 be the worst investment made certainly by Infineon and
20 maybe in the history of mankind. We have spent millions
21 and millions of dollars. And what we found to our horror
22 we purchased was this. On this 800-acres, unbeknownst to
23 us, was ten sites where decades ago tires had been dumped
24 as requested, as Senator Wiggins indicates -- it's okay.
25 You don't mind being called that now. We had been given

1 permission by State and federal agencies, our
2 predecessors, to put these there for erosion control. We
3 have ten of them.

4 In addition, sadly, we have the repository of all
5 the red-legged frogs in America that have decided to move
6 to this site. This document I just shared with you, and
7 in a minute our engineer will present it further, shows
8 you our ultimate dilemma. Out of that 800 acres, we have
9 been a three-mile corridor 400-feet wide. We call it a
10 frog freeway, so the frogs can go back and forth from the
11 various ponds, et cetera, which as you see we've been
12 required to dedicate hundreds of acres in perpetuity for
13 the frogs to bathe in.

14 Now, that's why we have a dilemma that is not
15 easily solvable. Because we were forced to do this by a
16 parade of agencies, U.S. Fish and Wildlife, State Fish and
17 Game, Water Quality, et cetera. And instead of being able
18 to use this land for parking, which we get to use ten
19 acres of the 800 ten days a year, instead we have this
20 repository of a world museum for red-legged frogs.

21 So we have in our possession letters from your
22 sister agencies saying, "If you remove the tires, we'll
23 kill you." This is a bad day for us. We have from you
24 the requirement to remove the tires. So our dilemma is
25 exacerbated by the fact that at least four agencies, two

1 federal and two state, that are saying don't do this
2 because, because. All of the sites are in or drain into
3 these frog -- what I call frog freeways and/or the lakes,
4 et cetera. So I just want you to understand that's our
5 dilemma.

6 In a minute, Al Cornwell will make a quick
7 presentation to you. We want to proceed. But we need the
8 get permits from an array of agencies who are resisting us
9 doing what you want us to do. But why I get -- I'm so
10 grateful for this opportunity is I wanted you to know that
11 we're not just sitting around ignoring you. We have a
12 bevy of agencies to deal with who have told us not to
13 disturb the habitat of the red-legged frog or the
14 red-legged frog, the habitat now being in effect partially
15 these ten tire sites. So that's our dilemma.

16 I promise you we're law-abiding folks, and we
17 want to work with you toward a solution which our engineer
18 will explain in a minute. Thank you again very, very much
19 for this opportunity to be here. Thank you.

20 And if I might, Al Cornwell is the engineer
21 that's going to design the solution.

22 CHAIRPERSON BROWN: Before you step away, do any
23 of the Board members have any questions?

24 I have one quick question. The documentation
25 about the red-legged frog I assume is in your CEQA

1 document. And have those been shared with the staff, any
2 preliminary documentation on your CEQA reports?

3 MR. GIACOMINI: I'm not sure.

4 Counsel, do you have all of our CEQA documents or
5 not?

6 STAFF COUNSEL LEVINE: No, we do not.

7 CHAIRPERSON BROWN: Would you be willing to
8 provide those documentations by the end of the week to
9 staff so we can work with you in an expeditious manner and
10 try to --

11 MR. GIACOMINI: Well, I'll get them to you as
12 soon as I can. I don't know if they'll be to you by day
13 after tomorrow. But, yes, we'll get you everything that
14 we have.

15 CHAIRPERSON BROWN: Okay.

16 MR. GIACOMINI: Because we were required to -- in
17 preparing all of these, we were required to do an awful
18 lot of CEQA compliance.

19 CHAIRPERSON BROWN: If you could share with us by
20 the Board meeting, so that staff has an opportunity to
21 review your CEQA documents, and that would be very
22 helpful.

23 MR. GIACOMINI: We're going to have to do more
24 CEQA too. Thank you very much.

25 CHAIRPERSON BROWN: Preliminary is fine.

1 MR. GIACOMINI: Thank you, Madam Chair.

2 CHAIRPERSON BROWN: Next speaker. Could you --
3 since these aren't in order now and you've all ordered
4 yourselves, you'll have to state your name and spell for
5 the record so we know who the speakers are.

6 MR. CORNWELL: Al Cornwell, C-o-r-n-w-e-l-l.
7 Good morning, Madam Chair and the rest of the Board. We
8 appreciate this opportunity.

9 I'll just want to briefly go through the document
10 you have in front of you that Gary referred to just so
11 that you know exactly what's what on here.

12 The green corridors are what we call I-Frog,
13 which is approximately three miles of corridors. The
14 darker green is the hundred-acre riparian preserve we have
15 for the frog and the mitigation ponds that go along with
16 that. The blue line streams, not to be confused with
17 those on the USGS maps, are suitable habitat and for the
18 frogs. The circles present the ten tire sites that drain
19 into -- either directly into the frog corridors or through
20 the blue line streams.

21 There is about two known sites of red-legged
22 frogs when this was prepared. Now that they're in the
23 other ponds as well, as well as this area down here. And
24 then there's suitable habitat here and at the bottom here
25 and up in here. So these areas basically all drain into

1 that into frog area.

2 What we are proposing to do based on what
3 Mr. Giacomini said a few minutes ago is to -- we've had
4 preliminary discussions with these agencies and we noted
5 their resistance to us working in those areas. Knowing
6 also your Board's desire to get the tires out, we're going
7 to come forth with another proposal for the agencies that
8 we can run by all them which would involve removing loose
9 tires on the top and not disturbing tires that would
10 disturb the soil that they're around.

11 And I think this is one of the confusions right
12 now is what involves -- what constitutes an imbedded tire?
13 I think our proposal originally was to remove tires that
14 are not imbedded which would not have any impact on the
15 structure of the soil that surrounds that tire. And we
16 can talk about that more later if you'd like.

17 But the plan that we'd like to take to these
18 agencies which would include the Corps of Engineers, U.S.
19 Fish and Wildlife at the federal level, and at the State
20 level the Regional Water Quality and Fish and Game, is to
21 work out a situation so when the tires that are left in
22 place so we don't disturb the soil or the erosion control
23 is taking place, is to work with them to allow the impacts
24 that would occur by virtue of that construction cover the
25 tires and cover it with erosion control fabric and erosion

1 control measures.

2 You know, what we would propose is to give the
3 Waste Management Board or your staff -- we can certainly
4 give them quarterly updates or where we are in that
5 process over the coming months as that unfolds.

6 And any other questions you might have, I'd be
7 happy to try to answer that with respect to Infineon.

8 CHAIRPERSON BROWN: Any questions? Thank you.

9 STAFF COUNSEL LEVINE: Madam Chair, if I may.

10 CHAIRPERSON BROWN: Counsel.

11 STAFF COUNSEL LEVINE: Steve Levine from the
12 Waste Board.

13 I can defer to the other speakers, but we will
14 revisit the issue of removing the loose tires on the top.
15 That's come up before, and I'll address that.

16 CHAIRPERSON BROWN: As soon as the speakers
17 conclude, we will refer to staff for further comment.

18 STAFF COUNSEL LEVINE: Thank you very much.

19 MR. IDELL: Good morning. Richard Idell. I
20 represent Universal Portfolio.

21 Universal Portfolio owns a piece of property in
22 Sonoma County off of Lakeville Highway, which it purchased
23 before the mandate to remove tires. And when it purchased
24 the property, there were these existing two tire piles.
25 And they were told in the initial transaction there was an

1 arrangement worked out with Sonoma County to remove 5,000
2 tires a year. And my client actually decided to take all
3 the tires out and spent almost \$300,000 removing what he
4 thought would be all the tires. And after 140,000 were
5 removed, found out there was still tires in the hole.

6 So even before this Board ever contacted us about
7 any issue relating to removal of tires, we had the wish
8 and desire to remove this, frankly because we thought it
9 was an eyesore. We didn't know about the history of the
10 erosion control, which we've now learned. These tires
11 were placed there a long time go before my client ever
12 brought the property as a way of preventing these
13 hillsides from slipping.

14 So on my client's property, we have this, you
15 know, drainage swale or hole into which tires were dumped.
16 And on the top of it are a lot of loose tires. And then
17 down below, there's a whole great number of imbedded
18 tires.

19 And so there we were. And the State came along
20 and said, "This is a tire disposal site and you've got to
21 remove it." And like the other landowners, we ended up in
22 a negotiated cost recovery.

23 We have been allowed, the RCD, to act as lead
24 agency in this. We signed the agreement in 2003. One of
25 the conditions of the agreement was that we meet on a

1 regular basis with the Board staff in order to explore the
2 progress of this matter. And in some cases, there were
3 months when we met every month. And there were months
4 when we met not every month, but periodically. And
5 meetings were held throughout 2000 -- remainder of 2003
6 and 2004 and on into 2005. And at various of these
7 meetings, discussions centered on what was the process of
8 removing the tires and how were we going to get them out
9 and what was that going to look like and what
10 environmental reviews had to be accomplished.

11 And if you look at the chronology of these
12 events, it hardly shows delays. It shows nothing but
13 trying to get the job done. And then finally in the
14 spring of 2005, we reached a point where the various
15 surveys, the geotechnical surveys, and the environmental
16 surveys, and that sort of thing had been completed so we
17 can go to the County to get permits, because we can't
18 obviously go in there with heavy machinery on a piece of
19 private land and conduct a work of improvement of a
20 construction site without having a permit to do so.

21 And eventually in the summer of 2005 last year,
22 before your August meeting, we had reached a point where
23 we were ready to submit applications for permits. And all
24 of that was done. And, in fact, we submitted a plan which
25 I have copies of here which were all stamped and approved

1 by the County, and we were ready to go. And when we went
2 to your meeting in August, we had those plans.

3 We were also told by the staff that they didn't
4 want to engage in the negotiated cost recovery until we
5 had the estimates from the contractors so that they knew
6 what the total cost picture was. And so the next step in
7 the process was to get up a timetable for removal of the
8 tires and get contractors who would bid to do the
9 remediation, the State contractor doing the removal
10 process, and you're all aware of that.

11 Way back in February of 2005, there was a meeting
12 among staff and the landowners which I attended -- and
13 I've been to I think virtually every meeting throughout
14 this process. And the discussion was over the fact that
15 the staff was telling us that they were not opposed to
16 leaving imbedded tires in the process. And so the concept
17 of leaving imbedded tires came up as an issue of dealing
18 with this issue. What's an imbedded tire? To us, what
19 that meant was it was a tire that was in the soil that had
20 soil in it, that was not loosely lying in a tire pile
21 somewhere.

22 We moved ahead throughout the spring and into the
23 summer and with those plans went to the County, had the
24 permits issued, gave a copy of the plans to the RCD to
25 deliver to staff. I understand now, I just learned this

1 today, that the plans were made available to your staff.
2 For some reason the plans on our property didn't get
3 picked up. I don't know why that is. I know that the
4 Silacci plans were picked up. They're identical in the
5 respects I'm going to refer to. But those plans provide
6 for a removal of the loose tire layer and then filling it
7 and then remediating after that.

8 Now, what I'm now told is that the word
9 "imbedded" is interpreted by staff as meaning one or two
10 layers. Now, I don't know if a layer is a tire laying
11 flat, a tire laying on its side, five tires stacked up, or
12 what it is. But I know that these plans that we spent a
13 lot of money and time creating won't work if what's going
14 to happen is what happened at the Silacci site, which is
15 that the contractor went in and contrary to the plans took
16 all the tires out.

17 The situation at the Silacci site exists that
18 that work of improvement was done not in accordance with
19 the permit but in accordance with what the contractor
20 thought he was supposed to be doing to take the tires out.
21 As Mr. Silacci will explain to you, that had an impact on
22 what he did in his remediation process, because he didn't
23 have enough dirt on the site to fill the hole. And on the
24 advice of the consultants that were there, he made a
25 remediation as best he could.

1 Now, in terms of our getting the work done last
2 fall, as we told the Board at the August meeting, what we
3 were up against was the rains. We didn't want to start,
4 and we couldn't get a contractor to commit to a price or
5 start date if they were going to run into the rainy
6 season.

7 The other thing that happened was that Mr.
8 Silacci's project was done in September, and the project
9 was not done in accordance with the plans. And all the
10 tires were taken out, which raised a question as to, well,
11 what is going on here and why did that happen? We were
12 unable to get a contractor who would agree to a price for
13 a period after the fall period. And we couldn't get a
14 contractor to commit to take the tires out -- to remediate
15 the project in the fall because of the rainy season.

16 So our intention was to go forward as soon as
17 things were able to dry out and could get a contractor to
18 commit to a price. We would then come to the staff. We
19 would give them the cost. We'd come before your Board.
20 We'd negotiate the cost recovery and make the commitment
21 to the contractor, and we would proceed.

22 Yesterday, I spoke with Mr. Lee and I explained
23 all of this to him. And the issue then became, well, what
24 are we going to do moving forward? Are we going to move
25 forward with these plans? Or are we going to move forward

1 with some other plans? Because if the Board has an
2 intention to accept the definition of imbedded that I'm
3 now told means one layer of tires, whatever that means,
4 whether it's one tire laying down or something else, I'm
5 not sure, these plans are going to have to be redone. I
6 don't know standing here today exactly how long that's
7 going to take. But the engineer told me this morning that
8 probably a month to revise the plans if they have to be
9 revised. After that, we have to go out and get a bid
10 based on whatever the new plan is. One thing's for sure.
11 It's going to cost more money.

12 We have been acting as diligently as we can.
13 There obviously was confusion and misunderstanding about
14 this issue of imbedded tires. We want to get this over
15 with as quickly and as cost effectively as we can. I
16 think this Board should consider that this plan is a plan
17 that everybody has approved. The County has approved of
18 it. It does involve leaving imbedded tires there. But to
19 me, I'm not sure what the difference is between one layer
20 of tires or the bottom layer of tires. If they are
21 imbedded tires, if you're going to take them all out, why
22 leave one layer in? Take them all out, if the goal is to
23 take tires out.

24 So there's obviously a philosophical issue here.
25 But from the perspective of getting the job done and

1 remediating the problem and avoiding the tire hazard, if
2 the imbedded tires are left and they're covered, there's
3 no fire hazard. If the Board directs us to do something
4 else, the Board directs us to do something else. It's
5 going to take more time, and it's going to cost more
6 money, which brings me to the last point I want to make.

7 In the summary that was presented to you, there
8 was a comment made that we are still entitled to cost
9 recovery, but that the cost recovery maybe affected by the
10 delay. I want to respectfully suggest to you we haven't
11 delayed at all. In fact, there's a silver lining in this.
12 If we had allowed the project to go forward last fall, we
13 would have been in the same position Mr. Silacci is, which
14 is the contractor would have constructed it not in
15 accordance with the permit, but the way the contractor bid
16 it, which is to remove all the tires. We wouldn't have
17 had enough fill. And we'd have the same erosion failure
18 that he had. And we are not in a position to allow an
19 unpermitted construction to occur on the property. So
20 it's actually a good thing that we weren't able to go
21 forward.

22 But we want some assurances from the Board that
23 this issue and this misunderstanding about this issue of
24 imbedded, whatever that means, is not going to effect our
25 agreement, because we've been acting in good faith

1 throughout this. And I'd be happy to answer any
2 questions.

3 I have brought some photographs to show that
4 there was no movement at all of the ground around two
5 sites that we have from this heavy rain, and we're just up
6 the hill from Mr. Silacci. So it does prove that the
7 tires sitting there do serve the purpose for which they
8 were originally there, which is to prevent these slides
9 from occurring. And, you know, I think that historically
10 that's been proven. It's unfortunate that that history is
11 in conflict with a mandate of the State. We'd like to
12 find a solution that makes everybody a little bit unhappy,
13 but solves the problem.

14 I'm happy to answer any questions you have.

15 CHAIRPERSON BROWN: Thank you.

16 Any Board member questions at this time?

17 COMMITTEE MEMBER MULÉ: Just one.

18 CHAIRPERSON BROWN: Go ahead.

19 COMMITTEE MEMBER MULÉ: When did you have these
20 plans made? When were they done?

21 MR. IDELL: They were done in June -- early
22 summer of 2005, and then they had to go to the County for
23 processing. They were processed and finished in August,
24 and they were made available to the staff I believe late
25 August. And as far as we knew, they had been seen and

1 were known. I know for sure they had the Silacci plans
2 which are identical in terms of how the project was
3 supposed to be done.

4 COMMITTEE MEMBER MULÉ: So the plans were
5 submitted to our staff at the end of August, is that what
6 you're telling us?

7 MR. IDELL: Submitted. As I understand it, what
8 happened was copies were made, and they were in the hands
9 of the RCD. And there were various phone calls back and
10 fourth, "How are we going to get the plans up here?" And
11 somebody said, "We'll come down and get the plans." And
12 the plans were left in a specific place, and they weren't
13 picked up. That's what I was told today.

14 COMMITTEE MEMBER MULÉ: So whoever did not take
15 the initiative to mail them to us?

16 MR. IDELL: We didn't know they weren't picked
17 up.

18 COMMITTEE MEMBER MULÉ: How could you not know
19 they weren't picked up?

20 MR. IDELL: They were not in my possession.

21 COMMITTEE MEMBER MULÉ: Maybe we'll ask whoever
22 else was responsible for those plans why they weren't
23 submitted to us either by mail or by overnight or
24 whatever.

25 MR. IDELL: My understanding is they were on the

1 Silacci site in a truck and were supposed to be picked up
2 and they were not picked up?

3 CHAIRPERSON BROWN: Do you know acknowledge that
4 there is a level of responsibility on your part or the
5 part of RCD to provide our staff with the documentation
6 since this is an agreement that you have with the Board.
7 Is there not a level of responsibility to make sure that
8 the staff gets the documents if you've made them
9 available?

10 MR. IDELL: Well, I didn't want to get into a
11 blame game here --

12 CHAIRPERSON BROWN: We don't either. But it
13 seems you've started down that road.

14 MR. IDELL: Well, you don't want to get into a
15 blame game. And I'm willing to accept, you know, what Big
16 Bird says which is everybody makes mistakes. But it seems
17 to me that if someone from your staff says we'll come pick
18 up the plans, that we don't have to worry about them not
19 doing that. But they will do that. And that if they
20 don't have them, they'll pick up the phone and call us. I
21 have never been told by anybody until yesterday that the
22 plans were not in the possession of the staff. I don't
23 know how they could function in a review of this site
24 without having the plans. So, sure.

25 CHAIRPERSON BROWN: That is a good question, and

1 I appreciate you bringing that to our attention. And we
2 will raise that during further discussion.

3 MR. IDELL: Okay.

4 BOARD MEMBER PEACE: I just have one more
5 question. According to the plans you have that leave the
6 imbedded tires, is that about 140,000 tires?

7 MR. IDELL: We have no idea how many tires it is.
8 It would be anybody's guess how deep that hole is. What
9 the plans say -- and the engineer can explain this to you.
10 He's here. He calls it one layer of tires, which he
11 interprets to mean the loose tires. So you would go in
12 there, and you would remove everything that didn't have
13 dirt or mud in it and take that away. And then when you
14 got to a point where you had imbedded tires, you would
15 then cover it with fill and then cover it with seed. And
16 I think there is some riprap that goes in there. He can
17 explain all the details to you. I have the plans here if
18 you'd like to see it.

19 CHAIRPERSON BROWN: We have three more speakers.
20 I don't know the order, other than Ms. Swent wants to be
21 last. Is Mr. Floccini or Mr. Silacci?

22 STAFF COUNSEL LEVINE: Madam Chair, Stephen
23 Levine from Legal.

24 While they're coming up, I will respond later to
25 the issues of the imbedded tires at Universal Portfolio

1 site and briefly on the contractor timetable issue.

2 CHAIRPERSON BROWN: Thank you.

3 MR. SILACCI: Madam Chair, my name is Don
4 Silacci. I'm sure you know my name well. But I've gone
5 through this process. I guess I come before the Board
6 humbled today about the situation and how it progressed
7 and the misunderstanding or understanding what imbedded
8 tires is and what it isn't.

9 It's kind of a tragic thing that happened the
10 first of the year with this big storm, because I thought
11 by now this would all be over. I was hoping it would be
12 in more ways than one.

13 With the large storm and the erosion that took
14 place on the farm on account of the storm, it's hard for
15 me to say that after going through this and spending the
16 amount of money we had to spend to get this job done and
17 the amount of time and effort that I put in getting all
18 the roads in, going back there when it was all done, and
19 taking the extra time and extra effort of fertilizing that
20 new ground and seeding it before they came in to hydroseed
21 everything just in case we'd have this storm that we did
22 have -- because we don't know what's going to happen in
23 the future.

24 So I went to every effort possible to try and
25 prevent what happened. I spent a week up there running

1 back and forth with bails of hay. I already had straw
2 rolls out there before the storm, but it just kind of took
3 them away. And I spent another week hauling hay up there
4 and stuffing it in the ditches. And through the last
5 storms, we pretty much contained it to what happened from
6 the first storm. So as far as erosion efforts we put into
7 action after the big storm, that pretty much worked, and
8 we've slowed the erosion process down.

9 On the downside of everything that's happened --
10 and the cost of the project is quarter of a million
11 dollars. I understand that I have to go back this summer
12 and come up with a plan or plans being designed now by Al.
13 We're talking about some things. And we're going to go
14 back and fix this. We have no option. It's something
15 that has to be done. We're going to do it.

16 On the downside of that, what's going to make
17 this a real financial struggle for me is that I'm a dairy
18 producer. We milk 200 cows. My son is a partner with me.
19 Got a \$230,000 note with the bank which pretty much all
20 went into this project.

21 Last week I received a letter from the co-op I'm
22 a member of which I produce my milk for informing me,
23 March 1st, your farm milk price is going to drop 20
24 percent. Twenty percent in my operation is going to
25 average 9- to \$10,000 a month. With the high cost of

1 feed, fuel, insurance, and everything else that goes along
2 with my business, it puts us in a real financial bind.
3 Maybe this is my problem. Maybe you don't want to hear
4 about it. Maybe I don't know. But I feel I have to tell
5 you.

6 My son, I'm very proud of him. He's doing a
7 great job on the farm. He pretty much has been running it
8 since I got involved with this. Been so active with the
9 tire thing since I got started working preparing for this
10 project in June. They got started August 4th. We
11 finished -- well, I haven't finished yet, because I try to
12 go up there once or twice a week anyhow just to keep an
13 eye on things. But I spent well over 300 hours working
14 with my equipment, with ERRG when they were up there, with
15 the restoration crew. So I've spent more amount of time
16 away from my business on this than I have on my business
17 this past year.

18 So that being said, I'm going to turn it over to
19 Al. He's got the design problems that we're going to go
20 back and fix this with. And hopefully when we reach the
21 point this Board will maybe during cost negotiations we
22 can come up with some solution. Otherwise, you know,
23 right now based on what's happening in the industry, our
24 future is in doubt.

25 Thank you. Are there any questions?

1 BOARD MEMBER WIGGINS: Yes.

2 CHAIRPERSON BROWN: Board Member Wiggins.

3 BOARD MEMBER WIGGINS: Well, I very much care
4 about the welfare of small dairy farms, because, you know,
5 we're loosing them. But the issue I understand from staff
6 is that the engineering design plan called for riprap, and
7 you didn't put riprap in; is that right? So could you
8 address that issue?

9 MR. SILACCI: The best way I can address that
10 issue is that when the project and all the grading and the
11 construction was done, we had a meeting. Al was there.
12 The geotech people were there. And they looked at the
13 site, and I think a decision was made then if we line that
14 and make a grass waterway out of that slope, we'll
15 probably be fine. And with the storm and the saturated
16 soil that was there then and the grass was only three or
17 four inches high, even with all the extra seeding I did,
18 it wasn't rooted in the ground far enough at that point in
19 time to do what it was intended to do.

20 Al can address that better than I can. But
21 that's my opinion.

22 CHAIRPERSON BROWN: Any other questions from
23 Board members at this time?

24 Thank you, Mr. Silacci. Appreciate it.

25 DEPUTY DIRECTOR LEE: Madam Chair, one

1 clarification for Board Member Wiggins on this point.

2 Again, staff had just brought the issue about the
3 riprap, you know, to the landowner's attention, because
4 again that was something that was called for in their
5 plan. But if their engineer is certifying that the raprap
6 wasn't needed or there's an alternate means of meeting the
7 objectives of their erosion control plan, that's quite
8 acceptable to us.

9 Remember, the original investigation was prompted
10 because of allegations that staff had improperly removed
11 tires and that was somehow implicated in the erosion
12 control problems that were experienced, you know, by the
13 site. I think what has been made clear by the
14 investigation is that it was the severe rains and, you
15 know, perhaps the fact that certain elements of the plans
16 weren't done that are largely responsible for that.

17 BOARD MEMBER WIGGINS: Is the engineer here?

18 MR. CORNWELL: I am.

19 CHAIRPERSON BROWN: Could you briefly address
20 that, because we still have two more speakers and want to
21 respect everybody's time.

22 MR. CORNWELL: I want to briefly talk about a
23 couple of the issues on the Silacci sites specifically.
24 But I'll start with the riprap since that seems to be a
25 big issue.

1 CHAIRPERSON BROWN: Can you restate your name for
2 the record?

3 MR. CORNWELL: My name is Al Cornwell.

4 There's two conditions on the Silacci site that
5 changed the design. Obviously, the biggest thing was the
6 fact there was additional tires taken out, notwithstanding
7 the previous discussion. I won't go there now. But as a
8 result of that, you know, the amount of material that was
9 required to be brought in wasn't sufficient to create the
10 original grading plan. So Mr. Silacci in the westernly
11 most site got a very gentle slope down to the existing,
12 grade, and that's why there was no riprap needed in that
13 particular instance.

14 And on the other site, there was a similar slope,
15 but it was a little bit steeper. And so there was
16 discussion with the geotechnical engineers, and we thought
17 that that might be okay.

18 I know it's been said, you know, a number of
19 times, but I think, you know, it is important to note
20 that, you know, the severity of the storm certainly had an
21 impact on this site. And in all fairness to Mr. Silacci
22 and anyone else, you know, the Sonoma County Water Agency
23 which has jurisdiction over the ultimate approval of the
24 drainage plan and issues associated with that, you know,
25 has requirements that, you know, minor waterways which are

1 defined as draining one square mile or less -- we're
2 talking about draining a number of tens of acres here, not
3 nearly a square mile -- only requires design for a
4 ten-year storm.

5 So the fact that that site saw something in
6 excess of 100 years, which I think is fairly well
7 documented, was unusual. I'm sure if we would have had --
8 when your ERRG contractor visited that site in early
9 December, you know, everything was performing well. And
10 we had a number of storms. And I suspect very strongly
11 that if we had a normal, even a wet winter rather than an
12 extreme winter, we probably wouldn't be here today talking
13 about this.

14 Any time you disturb soil -- and I think that's
15 the issue surrounding the imbedded tires, is, you know,
16 when do you disturb soil in taking out these tires, but
17 I'll let staff address that. But any time you disturb
18 soil and there's -- you know, you've created a situation
19 in any graded site for the potential for erosion during
20 the subsequent winter. It's very well documented, and
21 it's done. And that's why we have erosion control plans.
22 That's why we implement those. They're ongoing -- in any
23 construction site, they're an ongoing thing throughout the
24 winter. They're not a static thing. And I think the
25 erosion that occurred given the severity of the storm is

1 not unreasonable to expect, nor was it extreme. Was it
2 there? Absolutely. But I don't think it was something
3 that was unusual.

4 The only last item I'll reiterate is the fact
5 that we are working with Mr. Silacci right now to find a
6 fix for the next season. And that's it, I have with
7 respect to Mr. Silacci's site.

8 CHAIRPERSON BROWN: Member Wiggins.

9 BOARD MEMBER WIGGINS: So I just want to clarify.
10 You're going to revise the engineering design plan for the
11 site; is that right?

12 MR. CORNWELL: Well, we're going to revise the
13 fix for the erosion that occurred this past December.

14 BOARD MEMBER WIGGINS: Isn't that a design?

15 MR. CORNWELL: Yes. But we're not going to
16 redesign the entire site.

17 BOARD MEMBER WIGGINS: Right. Is that going to
18 be presented to staff as part of the --

19 MR. CORNWELL: We'd be more than happy to submit
20 that plan just like we did the first plans.

21 BOARD MEMBER WIGGINS: Because I think that's an
22 essential part of this program.

23 MR. CORNWELL: We don't have a problem with that
24 at all.

25 BOARD MEMBER WIGGINS: Okay. Then you will be

1 coordinating that so that the plan for erosion control
2 won't be part of the Board process?

3 MR. CORNWELL: We can share with to the Board.
4 And if they would like approval of that before we start,
5 we can certainly accommodate that as long as we can still
6 get it done before the 2006-07 rainy season.

7 CHAIRPERSON BROWN: I think if you're going to
8 request at some future date for that additional erosion
9 control to be part of the negotiated cost recovery, it
10 needs to be addressed with staff.

11 MR. CORNWELL: That's fine.

12 CHAIRPERSON BROWN: And then also, does that mean
13 that you will provide for the previous erosion control an
14 MOU as staff had requested stipulating that those
15 additional measures of riprap were deemed not necessary
16 under current Sonoma County regulations?

17 MR. CORNWELL: I don't have a problem --

18 CHAIRPERSON BROWN: Is that necessary at this
19 point?

20 DEPUTY DIRECTOR LEE: Yeah, Madam Chair. If I
21 may clarify this point.

22 With regards to the Silacci situation
23 specifically, we're not requesting any specific approval,
24 per se, of their erosion control plan. Under the
25 negotiated cost recovery, that's their sole

1 responsibility. As I indicated in my previous remarks,
2 our main interest on this was because of the allegations
3 that the removal had complicated the situation. And I
4 think as Mr. Cornwell has mentioned that the severity of
5 the storm was far in excess of anything the site was
6 designed for is the real reason behind that.

7 Now with regards to the Infineon, Floccini, and
8 Ahlgrim sites and Universal Portfolio, we are much more
9 concerned with regards to what their remediation plans are
10 there, particularly because as we understand it today
11 there still is this consideration of leaving a significant
12 number of the tires in place, which as we will discuss is
13 something we feel is contrary to the Board's direction in
14 this matter.

15 CHAIRPERSON BROWN: Thank you.

16 MR. CORNWELL: Can I just clarify one thing?
17 I've been a practicing licensed civil engineer for over 30
18 years. I have yet to write a Memorandum of Understanding
19 regarding an as-built grading plan, with all due respect
20 to the ERRG person that spoke earlier. It is not a common
21 practice. It is a common practice to provide as-built
22 plans, which we did. But the Memorandum of Understanding
23 is not something that's a normal practice.

24 And then if I could switch just for a minute and
25 talk about Floccini, so I don't have to come up here

1 again. Or would you rather me talk after Mr. Floccini?

2 CHAIRPERSON BROWN: Well, I do want to get to
3 Mr. Floccini and Ms. Swent and had made a pledge out of
4 respect to everybody in the audience we would do our best
5 to complete this by 12:30. So with everybody's knowledge
6 we are going to go over that time frame and we're doing
7 our best to keep this hearing and Committee meeting to
8 that time frame.

9 So I would like to let Mr. Floccini speak and
10 then --

11 MR. CORNWELL: If you need further clarification
12 after that on his, I'd be glad to answer that.

13 CHAIRPERSON BROWN: We appreciate your
14 willingness to do that.

15 MR. FLOCCINI: I'm Andrew Floccini. We have a
16 tire site. It was an old spillway that was washing out,
17 so we filled it with tires. We filled it with tires
18 because the site -- you have pictures I believe of these.
19 It shows the site hills sloping, sliding down. It washed
20 out because the spillway washed out a deep gully someplace
21 about 30-feet deep. We put the tires in over time. And
22 the hill hasn't slid for at least the last ten years.
23 It's been pretty stable.

24 So we would like to leave as many tires as
25 possible, because of the slide, which the tires are

1 holding in place right now and just remove the top and
2 fill it in from there.

3 You can tell on the other side of the tires --
4 the other side of the hill, it hasn't slid because there's
5 a spring above on that hill also that the tires have taken
6 the water and draining the water away from the other side
7 of the hill. So the tires are doing a purpose. But I
8 know they have to be covered or removed. But we'd like to
9 leave as many as possible to keep the hill from sliding.
10 And the safety for taking the tires out is fairly deep.
11 It may slide in when the tires are taken out.

12 Some of the pictures show that the dirt is
13 sliding in on the top edge of the tires. So you know the
14 dirt is falling on the high side. The tires are holding
15 the dirt from sliding down into the pile. So you can see
16 they are doing a job there. We'd like to leave as many as
17 we can here to save fill and to stabilize it the way it is
18 now.

19 And the hill is not sliding anymore now. It's
20 been stable for at least ten years because of the tires
21 are there. The spillway is not used anymore. It's
22 blocked off. We have a different spillway for the damn.
23 So it's not a waterway.

24 That's basically I guess what we'd like to do,
25 leave most of them in there. You'd almost have to see the

1 site in person to really visualize the actual site.

2 So I don't know. I guess do you have any
3 questions?

4 CHAIRPERSON BROWN: I don't think so.

5 Thank you, Mr. Floccini. Appreciate it.

6 Ms. Leandra Swent I believe is our last speaker.

7 MS. SWENT: Good afternoon. And thank you for
8 staying this morning. I appreciate it.

9 I'm going to try not to address everything
10 because there's so much to address. But I'll address the
11 two main issues that I think are of concern to you.

12 Number one, I don't want to place blame on
13 anybody or point fingers either. I don't think that's
14 appropriate. I think we talked with Jim Lee and Bob Fujii
15 over the last few weeks about a potential time extension
16 not because we don't want to move forward in a timely
17 fashion, but because of what happened in specifically Don
18 Silacci's site. We really rushed to do this project at
19 the end of last season. And I think that's why there were
20 a lot of miscommunications, misunderstandings, and
21 problems out in the field because everybody wanted to get
22 that job done quickly, especially Mr. Silacci. And we
23 were up against the time frame of the October 15 deadline
24 for Fish and Game requirements to be out of a site like
25 that.

1 And my goal is to eliminate a repeat of that
2 process for these other sites. And that's the only reason
3 that I expressed a concern about whether or not we could
4 move forward as quickly. Because we do really need to go
5 back and look at whether or not we can do erosion control
6 that's going to really work this time.

7 Having said that, certainly the Universal
8 Portfolio project is ready to go forward as currently
9 designed, if possible. And they are certainly willing to
10 go forward.

11 The Floccini site, we need direction from the
12 Board about this issue about imbedded tires that I think
13 we'll probably be having a lot more discussion about in
14 the next week or so.

15 I want to reiterate something and why we ended up
16 going down this road, because it's not a new request to
17 leave tires buried as staff has indicated in their report.
18 Back in I believe it was 2004, your staff and the RCD and
19 landowners met with representatives of the Department of
20 Fish and Game and Regional Water Quality Control Board.
21 Both Bill Cox and Bill Hurley came to those meetings and
22 expressly requested that alternatives be shown leaving
23 tires in place on these sites. And their concerns were
24 because of the lack of stability on these sites, the
25 highly erodible soils and the fact they all drain into the

1 Petaluma River, which is currently listed as impaired for
2 water quality and pollution due to sedimentation. It's
3 impaired for other reasons, but also sedimentation. So
4 that was one of their concerns.

5 And we moved forward with that as an
6 understanding. Staff said they agreed to that. They
7 understood the desire of those two agencies to leave some
8 of the tires in place. And the imbedded tire issue is
9 certainly one of semantics that we all have a different
10 idea of what it means, I think. And we need to get that
11 determined before we can move forward with designing these
12 other projects.

13 The CEQA studies have been done for all of the
14 sites. The Floccini site is getting ready to have
15 geotechnical surveys done out there. The extent of those
16 will depend on how many of the tires do need to be removed
17 from the site and what the staging will be like, because
18 that hillside is highly unstable. A ramp behind the tires
19 and below the tires -- it's very difficult to access the
20 site through their property, because there's an existing
21 dam and spillway. And that dam is very small. There's a
22 pond behind the dam. And I don't know that large trucks
23 can get back and forth through that area.
24 It's potential that it will be required to bring in heavy
25 equipment through the neighbor's property if we are

1 removing a huge number of tires and having to remove a
2 large portion of that hillside we believe will have to be
3 removed and regraded to make sure that no erosion or
4 landslides happen.

5 One of our big concerns is landslides occurring
6 during construction. Some of the areas according to
7 Mr. Floccini where the tires have been buried because of
8 the previous landslides are probably 30-feet deep, and
9 that's a major concern. And those tires definitely are
10 altered, full of soil, and have been squashed. There's no
11 other way to describe it. The hillside has pushed the
12 tires down, and they are firmly imbedded in the landslide
13 in the landscape there. And it's a big concern of ours
14 how we move forward with that project.

15 I think I'll leave it at that since you all want
16 to get this finished. And if you have any questions, I'll
17 be happy to answer them.

18 CHAIRPERSON BROWN: Do we have any questions?

19 Thank you very much. And actually that request
20 was from landowners, was my understanding. So we're happy
21 to spend as much time as necessary. If you're finished,
22 if you remain so we can refer questions. I'd like to have
23 staff follow up. Then we'll proceed with questions.

24 MS. SWENT: Can I say one more thing? I did have
25 a handout given to you all. And in that handout are the

1 pictures that Mr. Floccini indicated there are pictures of
2 Mr. Silacci's site. There is also the letter from Mr.
3 Silacci's dairy co-op explaining and his financial status
4 for the last two months.

5 CHAIRPERSON BROWN: Thank you.

6 STAFF COUNSEL LEVINE: Actually, Chair, before
7 Ms. Swent leaves, is it possible to ascertain as to
8 whether she'll be able to provide us with the CEQA
9 documents for the other sites besides Infineon for
10 Floccini and to the extend she's working on Ahlgrim?

11 CHAIRPERSON BROWN: That was going to be a
12 follow-up question. Thank you for putting it to the top
13 of the list.

14 MS. SWENT: Yes.

15 CHAIRPERSON BROWN: You indicated all the CEQA
16 documents and initial plans, can those be provided to
17 staff as well by the Board meeting?

18 MS. SWENT: Yes. All the CEQA studies have been
19 complete. Not all the CEQA documents are done because
20 some cannot be done until the designs are completed.

21 CHAIRPERSON BROWN: We realize that. But the
22 initial CEQA documents that have been completed, can those
23 be forwarded to staff for consideration?

24 MS. SWENT: Yes.

25 CHAIRPERSON BROWN: Thank you. Appreciate that.

1 We'll start with Steve.

2 STAFF COUNSEL LEVINE: Thank you, Madam Chair.

3 Hopefully that will include any drafts that
4 you're working on as well. We'd appreciate that. Thank
5 you very much.

6 I think I'd like to start as briefly as I can
7 with the imbedded tire issue. Ms. Swent is absolutely
8 correct that issue of leaving a certain number of tires on
9 site was addressed on a number of occasions during these
10 negotiations. I believe Ms. Swent said leaving some of
11 the tires in place. I think that would be a fair
12 representation.

13 Since it seems to relate with the Infineon,
14 Universal Portfolio, and Floccini site, I just wanted to
15 put some context. Hopefully you have the addendum that's
16 in the back of the room that was prepared. Again, this
17 issue first came to our attention just a few days ago, but
18 we didn't have an opportunity to speak with the site
19 representative from Universal until last night. So this
20 is now being submitted as an addendum.

21 And I want to start by just noting Mr. Cornwell
22 when he spoke at the early stage of this meeting on the
23 Infineon site talked about needing some clarification,
24 talked about removing loose tires on top, and wanting to
25 make sure he had an understanding there.

1 That issue actually was also an issue at the
2 August 16th Board meeting at which Mr. Cornwell on behalf
3 of the Silacci and the Universal Portfolio sites basically
4 advised of the intention to bury a majority of the tires.
5 I think -- again, they can speak again if I'm
6 misunderstanding this. But I think that's where the rub
7 is. Some versus majority. And I have some ellipses in
8 his quote. The full transcript is back there. I won't
9 read the ellipses, but this is a portion of what
10 Mr. Cornwell's testimony was in August 16th.

11 "There is some question as to how many tires
12 should be taken out in some of these sites. We'd
13 like to make sure that the Board takes into
14 account when they go out there and start removing
15 the top layer of tires that are loose, we would
16 very much like your cooperation and consideration
17 in leaving the tires that are buried and half
18 buried."

19 And Albert will address that in a minute as well.
20 That appeared to be the converse of what had been
21 negotiated over recent years, namely that while a bottom
22 layer of tires may be able to remain, the majority of
23 waste tires would never the less need to be removed so we
24 don't turn an unpermitted waste tire storage site into an
25 unpermitted waste tire disposal site.

1 And the quote from me at the August meeting was
2 briefly I talked about the initial agreement that I
3 believe Leandra properly mentioned, the concerns of the
4 water Board.

5 And then I say secondarily to that, "We have
6 always acknowledged that arguably for tire piles
7 located in the drainage courses of certain of the
8 properties, the bottom layer of those tires are
9 arguably currently providing erosion control.
10 And what we have made very clear in February of
11 this year is that working with their engineers
12 and our engineers, that bottom layer, if it's
13 probably incorporated into a final erosion
14 control plan with no potential for resurfacing,
15 that would be a potentially acceptable solution.
16 But it would have to be on a case-by-case basis
17 and a property-by-property basis."

18 So I believe a lot of the issues that are being
19 raised here were pretty much asked and answered at this
20 meeting.

21 CHAIRPERSON BROWN: Can I ask one question?
22 You're then specifically saying imbedded tires are those
23 that are majority buried, not those that just have mud
24 touching them or some debris on them being -- clarify what
25 you mean.

1 MR. JOHNSON: Madam Chair, Albert Johnson.

2 A buried tire is, you know, if it's truly buried,
3 you can't even see it. A partially buried tire, imbedded,
4 I would consider it to be the same. Whereas part of the
5 tire is buried, and part of the tire is sticking out of
6 the ground.

7 You know, at the Karen Gerbosi site, the Beebe
8 Family Ranch, we excavated tires that were buried at their
9 request. They were truly silted in, and they were several
10 maybe up to ten feet deep in some areas. We excavated
11 those out.

12 At the Silacci site, any tires that were imbedded
13 were not removed. And in addition, when we talk about the
14 bottom layers Steve's referring to, we talking about tires
15 that were relatively clean and left on the surface of over
16 any tires that were partially buried. Actually, at Don's
17 site, there was very few tires that were imbedded or
18 filled -- stuck in the dirt or in the mud at the bottom of
19 the hole. It was relatively dry from what I remember.
20 And we have our contractor here. They can verify that if
21 we want to discuss it further.

22 But, you know, the Floccini site, I've never been
23 there. But if it's true the tires were placed and the
24 land has slide and buried the tires, we don't really
25 have -- assuming that their geotech does their study and

1 stability is not an issue -- in other words, the tires do
2 not have to be excavated purposely, they can remain as is
3 and the slope still will be stable if we were to cover
4 them, because they're buried anyhow, we would leave them.
5 There's the possibility a geotechnical engineer may find
6 there's a slide plain there, and those tires would need to
7 be excavated so that the slide material that's unstable
8 would need to be removed and the slope rebuilt.

9 I spent two years working for a geotechnical
10 engineer, and we did a lot of this type of work on
11 hillsides in the east bay in the Bay Area.

12 DEPUTY DIRECTOR LEE: Madam Chair, one additional
13 consideration on this. I'm concerned about establishing a
14 definition for imbedded tires that basically means if a
15 tire has soil in it or on it that somehow it needs to
16 remain in place. Now this would certainly complicate our
17 life in remediating these sites.

18 I note in particular the Ahlgrim site where the
19 tires are all covered by dirt because the landowner in
20 contravention of the Board's directions, you know, placed
21 fill on top of them. Clearly, you know, we're not going
22 to look at any situation where tires that have soil in
23 them or on them can be left there.

24 Now with regards to the other sites, again, I
25 believe that the Board has exercised adequate flexibility

1 here. We've indicated that we are prepared, you know, to
2 look at, you know, a layer or two that may be literally
3 imbedded in the soil and be the incorporated as part of
4 their erosion control network. But, again, we're
5 concerned that again this -- trying to resolve -- let me
6 back up a minute.

7 I think the working definition that I think the
8 remaining site owners need to be looking at just as the
9 landowners for the initial four is that the working
10 definition is all the tires are going to be removed, you
11 know, with the possible exception of leaving a diminimous
12 number there, you know, which the Board's contractor as
13 they get into the site see it is permissible to go, to
14 remain in there.

15 CHAIRPERSON BROWN: Thank you, Jim.

16 MS. SWENT: I would like to suggest then --
17 because I think this is going to be an ongoing question of
18 semantics and what's going to happen down the road -- is
19 it needs to be determined before we get there and start
20 doing work so we can design our restoration accordingly.

21 And I would like to suggest that we provide you
22 with very conceptual drawings after we've gotten the
23 geotech studies that the Board can approve before we move
24 forward with actual full drawings and restoration designs.
25 Because I'm concerned we're going to go down the same road

1 and end up in the field with the question still being
2 unanswered and having a design that's no longer applicable
3 because of how the tires were removed.

4 CHAIRPERSON BROWN: Member Mulé.

5 COMMITTEE MEMBER MULÉ: Madam Chair, I don't know
6 if the Board is qualified to approve drawings. That's why
7 we have engineers. That's why we have technical staff and
8 engineers that we bring on to do that. So I don't know
9 that I support the Board approving --

10 MS. SWENT: I don't mean the Board. I mean your
11 staff. If I spoke inappropriately --

12 COMMITTEE MEMBER MULÉ: Well, I guess I was
13 assuming that you were working with our staff all along to
14 do that.

15 MS. SWENT: Oh, we had worked with them. But
16 they have not approved conceptual designs before we went
17 forward with the final project.

18 COMMITTEE MEMBER MULÉ: Well, again, I just think
19 that that's why we have engineers. And, you know, they're
20 technical people. They're trained to do that kind of
21 thing. And hopefully, you know, our engineers are talking
22 with your engineers, and you're getting this done so that
23 we don't have to have this discussion.

24 MS. SWENT: Okay. So we can work in that realm
25 then, because that's not what happened last time.

1 COMMITTEE MEMBER MULÉ: I thought you were
2 working in that realm all along.

3 MS. SWENT: We have not had the discussion about
4 providing conceptual drawings that would be approved
5 before we went forward. I would be adding a step in there
6 that I think would be beneficial to all of us.

7 CHAIRPERSON BROWN: I'm not sure the Board is in
8 agreement with adding any steps to this process. I think
9 the Board last August spoke very clearly as to what their
10 intentions were, and I thought we had agreements from the
11 landowners. And there seems to be some misunderstandings
12 at this point that need to be worked out.

13 What is the stipulated agreement at this point,
14 and where are we? Are the landowners prepared? I
15 understand that maybe one month is necessary to redo these
16 drawings. The intention is to remove all tires, is that
17 not the stipulated agreement? So we should design plans
18 to remove all tires; correct?

19 MS. SWENT: Well, that was not our understanding.
20 And I don't want to get into the imbedded tire discussion
21 right now because --

22 CHAIRPERSON BROWN: What is the stipulated
23 agreement that was signed by the landowners to get into
24 this process?

25 MS. SWENT: As I recall, there was nothing about

1 the exact number of tires that was going to be removed in
2 that agreement. The agreement was to moved forward --

3 CHAIRPERSON BROWN: Can I refer that to counsel?
4 Steve, what is the stipulated agreement regarding the
5 number of tires and extent of removal?

6 STAFF COUNSEL LEVINE: Stephen Levine, counsel
7 for the Waste Board. I'll try to be brief, but a number
8 of stages.

9 Initially, the purpose of the stipulated
10 agreement was to get these sites in compliance with the
11 Integrated Waste Management Act and the tire statute.
12 Technically, each site is a waste tire storage site if it
13 has 500 or more tires at the site. It's very important to
14 point out -- and to my understanding, staff wants to
15 maintain its commitments it has made in this regard.
16 There were two commitments we made, not quoting from the
17 record.

18 But what I did say in August and what I'll say
19 again without quoting it, is I believe some of the --
20 Leandra or Mr. Idell properly pointed out in the fall of
21 2003 there were some concerns by the Water Board about
22 removing every single tire. This is me speaking from my
23 recollection of what his main concern was, but it was
24 basically as Al was talking about, the tires that are
25 sticking out, ripping them out, tearing them out of an

1 embankment which could potentially collapse an embankment
2 further. They had concerns about that. And as early as
3 the fall of 2003, staff made a commitment to take that
4 into consideration at the sites.

5 Also as I believe Mr. Idell correctly pointed
6 out, in February of 2003 staff went further -- and I think
7 it's important to see the progression here. We're going
8 from no tires or no more than 500 at the very most to
9 whatever is necessary if they have to be torn out, but
10 everything else goes, as they correctly pointed out and
11 Leandra too, some of the tires, additional tires being
12 removed. And that was the February meeting and that was
13 talking about if there's some initial layer, bottom layer
14 that is arguably, as Albert pointed out, pretty much
15 silted in. As in the Beebe Family Ranch, they were silted
16 in. And it was a problem taking them out. That's what we
17 tried to express to them.

18 Apparently, there was still some need for
19 clarification in August. That's why what was said on the
20 record was said in August. There's also a follow-up
21 paragraph in this addendum that talks about after the
22 Board meeting conversations I had with the engineer and
23 lead agency on this. I won't read it. It's already in
24 the record. To try to make the clarification as clear as
25 we could at that time. And again this is in mid-August.

1 Apparently now plans could have been given to us in late
2 August. So even before this, we thought we had this
3 clarified.

4 The Silacci site was done in accordance with this
5 clarified understanding.

6 So I hope that answers your question. We remain
7 committed to those assurances we provided.

8 CHAIRPERSON BROWN: Thank you.

9 Do you have a question?

10 BOARD MEMBER WIGGINS: Well, I just think I want
11 to recap what you're saying.

12 Basically, the tires have to be removed, and you
13 can work on a case-by-case basis. And honoring that is
14 probably very important for the landowners, because they
15 have to -- understand that they have to remove all the
16 tires and that the staff will work with them on a
17 case-by-case basis.

18 DEPUTY DIRECTOR LEE: That is correct, Board
19 Member Wiggins.

20 Again, I think the problem we're having is the
21 premise that we are starting with is that removing most,
22 leaving a few. The premise that the landowners' premise
23 is leave the majority and don't take out that many.

24 But I think it's clear from the remediations that
25 were accomplished last year that clearly on those sites

1 the landowners, you know, did understand, you know -- they
2 were able to correctly interpret the Board's direction in
3 this regard. The vast majority of the tires on all those
4 sites were removed. As I said, a de minimis number was
5 all that was left at any of these sites. And that would
6 be the course of action that we would propose for the
7 remainder of these sites as well.

8 BOARD MEMBER WIGGINS: I would just say the
9 discussion about what defines an imbedded tire should be
10 left out. That is non-productive.

11 MR. IDELL: I have one point of clarification.

12 The engineer who drew our plans is here, and it
13 wasn't the concept of the majority of the tires or the
14 minority of the tires. It had to do with those tires,
15 which as Mr. Johnson has pointed out, are imbedded in the
16 soil. They're performing a function. You can ask him why
17 the plans were drawn the way they were, but it's not -- we
18 can't as a matter of liability as a landowner -- you
19 wouldn't have someone come into your home and remodel a
20 bathroom without having a building permit. We can't have
21 a contractor come on our property and perform a work of
22 improvement that's not consistent with the plans.

23 So we appreciate the case-by-case basis, and
24 we're happy to work with staff and all of that. But we
25 have to go to the County and say, will you stamp this?

1 Will you approve this? Can we then do this project?

2 And there is a very significant difference
3 between scooping out every single tire in the entire site,
4 which the Beebe family decided to do. They didn't have to
5 do that. We aren't interested in doing that, because we
6 don't want the problems associated with that and the
7 larger expense of the program if we don't have to do it.

8 So you can't put the cart before the horse. We
9 need to have some understanding of what is there, which
10 the engineer can figure out. Come to the staff and
11 approve it. But this mandate that the majority of the
12 tires come out, I don't know. I don't know how many are
13 imbedded. Nobody really knows that. They make may get
14 down in our site where we've already taken out 140,000
15 tires and find out there's 20 feet of imbedded tires. Now
16 maybe that is the majority. I don't know.

17 BOARD MEMBER WIGGINS: I would just caution any
18 landowner or any landowner's representative from working
19 against their own interests.

20 STAFF COUNSEL LEVINE: Steven Levine -- go ahead.

21 CHAIRPERSON BROWN: Do you have any questions?

22 STAFF COUNSEL LEVINE: If I may as a follow up.

23 I think there's one thing that needs to be said
24 that we're all on the same page. What happens in all
25 these sites -- and I think Mr. Idell's example there is

1 the frustrations he had to go through in being told by the
2 prior landowner he purchased the property from there was
3 only 70. He promptly removed 70. Then he removes another
4 70. And it seems like a bottomless pit. I think that's a
5 very significant point.

6 I think that's exactly what we tried to do on the
7 Silacci site here. The other just decided to remove all
8 of them. But on the Silacci site, you have to start
9 removing tires. As you remove the tires -- and Albert can
10 clarify -- you'll get to a point where there are just --
11 all that's left are imbedded which you have to rip out and
12 things you can't even see, because they're really deeply
13 buried. And that was the case-by-case determination made.
14 That's that bottom layer that's been referred to.

15 Albert, did you want to elaborate?

16 MR. JOHNSON: I thought you got it.

17 STAFF COUNSEL LEVINE: If I may, I have two final
18 points, and I'll wrap.

19 One on the issue that was raised on the Universal
20 Portfolio site of issues with the County and the grading
21 permit. In the addendum I note we have contacted the
22 grading permit office of Sonoma County and confirmed from
23 a grading permit perspective whether the fill material is
24 primarily waste tires or soil is not a substantive issue
25 for that. So long as there is not a substantial change to

1 the general surface contour or slope, the use of primarily
2 soil as fill as opposed to waste tires would be considered
3 a significant amendment.

4 The PRMD further advised the remediation may
5 proceed under the existing grading permit and that
6 as-built plans or some other record showing the work as
7 performed could be submitted after the project is
8 completed. And I'd be happy to work with staff, would
9 work with any of the landowners interested in having
10 further follow-up discussions with the senior engineer at
11 the PRMD that was helpful in that regard.

12 My final point is, as Ms. Swent mentioned during
13 her presentation, the issue of burying tires has been
14 going on for some time. That's really I think the crux of
15 this. The crux of the struggle that that Board has been
16 dealing with is, A, can we leave the tires in, because
17 it's an engineered fill. And for better or worse, over a
18 six-year period, the real answer was from our expert's
19 perspective you would have to shred the tires and use that
20 as fill. Otherwise, it's really not an engineered fill.
21 It's just burying tires.

22 And the second issue, of course, well, if you
23 bury tires, can we not -- just leave us alone after that?
24 And the issue there is this Board has certain obligations.
25 And I'm not going to go into detail, but is in the item,

1 we've recently struggled with that issue with inert
2 debris, concrete, things like that. And we've made some
3 concessions, allowances, that that is not as serious an
4 issue as municipal solid waste being buried. But still
5 those sites have these second tier permits and are
6 regularly inspected.

7 My understanding -- and they can correct me if
8 I'm wrong -- none of these sites want us to go down the
9 regulatory process of coming up with permits so that they
10 would then be known in their county as a permitted
11 disposal site. And so that's the struggle and why we're
12 trying as best we can to accommodate leaving some but not
13 making it a disposal site.

14 CHAIRPERSON BROWN: Thank you, Steve.

15 Any questions?

16 I do have one question of Mr. Idell. Given the
17 information this Steve just mentioned on the grading
18 permit being viable, are you prepared to move forward with
19 the removal of the tires this summer?

20 MR. IDELL: Sure. As long as the engineer who's
21 here can go and do whatever studies are necessary and
22 advise what needs to be done.

23 CHAIRPERSON BROWN: Mr. Cornwell, can you respond
24 to that? Will you be ready to move forward so that
25 Mr. Idell can get an engineer and remove the tires?

1 MR. CORNWELL: We're prepared to move forward.

2 CHAIRPERSON BROWN: I mean a contractor. I'm
3 sorry. I misspoke. Your difficulty last summer with
4 moving forward with the removal of the tires, my
5 understanding, is you couldn't find a contractor -- what
6 was your difficulty last summer in proceeding?

7 MR. IDELL: I apologize for the confusion.
8 Mr. Cornwell is the engineer who designed the system. If
9 we're going to have to redesign it, we have to redesign
10 it. Once it's redesigned and new plans have been approved
11 and if it's true what Mr. Levine says -- I have no reason
12 to doubt it -- that could be done in a month, we have
13 about a month or so to get the plans redesigned. Then we
14 go to the County, and we get that in a month or so. So we
15 should be fine in terms of getting it this summer.

16 I don't have any reason to believe we're not
17 going to be able to get a contractor to do the remediation
18 once we know what we're going to do. This is going to
19 have to be done in conjunction with staff, because there's
20 been a new issue that's been interposed into this which is
21 what actually happens at the construction site is going to
22 be determined by what we find. And I'm not quite sure how
23 that fits in with everything. Because the only thing I'm
24 concerned is I don't want improvements to be done that are
25 not consistent with the permit. I have no reason to

1 believe that if all these things fall into place that we
2 can't go forward this summer. We have two contractors we
3 already have bids on on the current plan. But if the
4 current plan isn't going to be allowed, we can't use that
5 plan.

6 CHAIRPERSON BROWN: Okay.

7 MR. CORNWELL: We're prepared to modify the plan.

8 CHAIRPERSON BROWN: Okay.

9 Mr. CORNWELL: But I think it should be previewed
10 by staff, your staff. And we get their concurrence prior
11 to when we begin.

12 CHAIRPERSON BROWN: Has staff had an opportunity
13 to review those?

14 MR. CORNWELL: Those plans aren't available yet
15 because --

16 CHAIRPERSON BROWN: The new plans.

17 MR. CORNWELL: The new plans, correct.

18 CHAIRPERSON BROWN: But as Board Member Mul
19 already mentioned, the Board has contracted people to
20 review the plans. If we are given the plans in a timely
21 manner, which we have not been getting materials and
22 documentations, CEQA documents, or anything in a timely
23 manner, is there a pledge that staff is going to be given
24 the information that they ask in a timely manner?

25 MR. IDELL: From my perspective, I don't agree

1 the Board has not been given things in a timely manner.

2 I've answered every phone call, answered every letter --

3 CHAIRPERSON BROWN: We're not saying you are.

4 But you said your documents sat at Mr. Silacci's site

5 since last August, and those weren't. CEQA documents have

6 been requested, not just on your site, on other sites.

7 And those have not been shared even preliminarily with

8 staff.

9 And this is not directed at you, Mr. Idell. I

10 hope you know that. I think Ms. Swent understands these

11 are requests that have been made directly to her, is my

12 understanding, and we have not been able to get

13 documentation. If we can get a pledge that we can get the

14 documentation when staff asks, my question to you,

15 Mr. Idell, is are you prepared to move these tires this

16 year before the rainy season come this fall?

17 MR. IDELL: As long as we have a permit that's

18 been issued and the work is going to be done in accordance

19 with the permit, we're prepared to move forward this year.

20 As long as we have a permit, a contractor that can do the

21 remediation, and the State contractor available to do the

22 work in accordance with the permit, we're prepared to move

23 forward.

24 CHAIRPERSON BROWN: Any comments from Board

25 staff?

1 Thank you very much. I think at this point,
2 staff, we will put this item over to our full Board
3 meeting, not requiring each of you to be there. But we
4 would like further discussion at the Board meeting if
5 there is follow up on the documents that you are going to
6 get to the Board staff before the Board meeting on Tuesday
7 for further discussion if necessary on other appropriate
8 actions or avenues that we can take in completing the
9 process of clean up on all these sites.

10 MR. IDELL: If we have materials, to do what with
11 them?

12 CHAIRPERSON BROWN: We have specifically asked
13 for CEQA documents that are required and that have been
14 pledged to be provided to our staff before our Board
15 meeting on Tuesday.

16 MR. IDELL: I see.

17 I have a procedural question. I understand that
18 Tuesday is also a consideration item and that after that
19 we're going to go do our documents and get the new permit
20 or whatever is going to happen. Will we then be following
21 the procedure of dealing with staff on the cost recovery
22 issue, or do we have to come back in front of the Board?

23 CHAIRPERSON BROWN: Counsel.

24 STAFF COUNSEL LEVINE: Steven Levine, counsel for
25 the Waste Board. Yes.

1 What we'd like is, again, Mr. Idell made a very
2 thorough presentation at the August Board meeting and
3 provided a very thorough documentation on a lot of the
4 elements. As he mentioned, he did not have at that time
5 the contractor restoration bids, which for most of these
6 sites -- and maybe not for his because he's done a lot of
7 work -- that's their major cost is their restoration. We
8 did request before we could give a final determination on
9 negotiated cost recovery that document. We'd be perfectly
10 willing to work with Mr. Idell in receiving that
11 supplemental information. And at his preference, he can
12 either make a further appearance or just submit that. And
13 they will then wrap up that aspect of this prior to start
14 of work.

15 MR. IDELL: The reason I ask this was there was a
16 mention in the agenda item about appearing at an April
17 meeting, which I can't do because I'm going to be in a
18 two-month trial then. So I wanted to make sure that we
19 can move forward without having to make an appearance.

20 CHAIRPERSON BROWN: Sure. We'd be happy. It's
21 not required that you do. Thank you very much.

22 Any other business, new business, old business?
23 This meeting is adjourned.

24 (Thereupon the California Integrated Waste
25 Management Board, Special Waste Committee

1 adjourned at 12:57 p.m.)

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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 15th day March, 2005.

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